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STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
UTTAR PRADESH, LUCKNOW  
COMPLAINT NO. 10 OF 2010

M/s. PNC Infratech Limited  
Through its Chairman cum Managing Director  
Registered Office at PNC House  
D-51-Kamla Nagar  
Agra-282005

...Complainant

Vs.

01. M/s. Iffco Tokio General Insurance Company Limited  
Through its Officer-in-Charge  
Office situated at FAI Building  
10 Shaheed Jeet Singh Marg  
New Delhi-110067

02. M/s. Iffco Tokio General Insurance Company Limited  
Through its Head Office situated at 4<sup>th</sup> Floor,  
Narain Manzil, 23 Barakhamba Road  
Cannaught Place  
New Delhi 110001.

03. M/s. Iffco Tokio General Insurance Company Limited  
Through its Legal Head  
Registered Office situated at 34 Nehru Place  
New Delhi 110019

... Opposite Parties

**BEFORE:**

**HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT**  
**HON'BLE MR. JUGUL KISHORE, MEMBER**

For the Complainant : Sri Dhruv Kumar, Advocate.

For the Opposite Party : Sri Ashok Mehrotra, Advocate.

Dated : 15.09.15

**JUDGMENT**

**PER MR. JUSTICE VIRENDRA SINGH, PRESIDENT**

This complaint under Section 17 of the Consumer Protection Act, 1986 has been filed by M/s. PNC Infratech Limited against M/s. Iffco Tokio General Insurance Company Limited with the following prayers :-

- (i) the complainant is entitled to be indemnified for Rs.68,51,441/- being the settled and agreed claim from the opposite parties.

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(ii) The complainant is also entitled to get interest on the aforesaid amount @ 14.5% as provided under I.R.D.A. (Protection of Policy Holders' Interest) Regulation 2002 till the date of payment of claim to the complainant by the opposite parties.

(iii) The complainant is also entitled to all the incidental expenses incurred in correspondence and running etc. amount to Rs.50,000/- by the opposite parties.

(iv) The complainant is also entitled to be reimbursed the legal expenses amounting to Rs.40,000/- by the opposite parties.

(v) Any other relief which this Hon'ble Commission may deem fit and proper under the circumstances of the case may also be awarded in favour of the complainant against the opposite parties.

The facts of the complaint case stated in brief are that the complainant is a registered company and is engaged in construction of road and other likewise project. The complainant has filed the instant complaint against the opposite parties for deliberate lapses and deficiency in services coupled with unfair trade practice by rejecting the settled and agreed claim for Rs.68,51,441/- whereby the complainant has suffered a huge loss not only in shape of money but the future business fortunes of the complainant had also been adversely affected. The complainant was granted Rehabilitation contract no. 51/PD/SRP/2005-2006 dated 01-10-2005 a world bank project by Public Works Department from Chainage from Km. 159 to Km. 222 on state highway no.33 between Kasganj to Hathras. The complainant had taken a Contractor All Risk Policy No. DZ/ICA/05-06/CB/000011/32010092 from opposite party no.1 for the period from 09-11-2005 to 30-09-2007 + 12 months maintenance visit cover for the cost of project of Rs.26,50,10,339/- and paid premium of Rs.11,29,095/- to the opposite party no.1. The modus operandi of making highways is that half width of existing road is blocked for traffic for smooth construction of the road in limited stretch only and other half width is opened for traffic movement. It is alleged by the complainant that there were torrential rains on 09/10-07-2006 and 27/28-07-2006 resulting in inundation on



road causing damage to the road. The complainant informed the opposite parties and in turn Sri J N Sharma, Surveyor was deputed by opposite parties. The Surveyor visited on the site and noted the damages. The surveyor had written a letter dated 27-12-2006 which was replied by the complainant vide letter dated 12-02-2007. The complainant submitted final claim bill for Rs.1,49,19,330/- but surveyor has assessed the gross loss for Rs.1,00,11,120/-. The Surveyor assessed the loss based on bill of quantity (BOQ) and not on standard Data Book. Although, Ministry of Road Transport and Highways has prescribed the rates in standard data book. Surveyor was of the opinion that insurer's liability would increase in case rates were taken according to standard data book. It is further alleged by the complainant that after prolonged correspondence and discussions with the opposite party and surveyor, the surveyor settled the claim for Rs.68,51,441/- and accordingly offered Rs.68,51,441/- and as per advise of the surveyor an unconditional acceptance for full and final settlement was given to the surveyor vide letter dated 04-08-2007. In spite of full and final settlement offered by the opposite parties, payment was not made within time as promises. The complainant then sent a letter dated 15-09-2007 to the surveyor under intimation to the opposite party no.1 reminding the payment of settled and agreed claim. It is stated by the complainant that instead of paying the claim, the opposite party no.2 sent a letter dated 15-10-2007 to the complainant asking to submit proof of flooding in the area. The complainant submitted his reply vide letter dated 27-11-2007. The complainant had already submitted rain record duly certified by the office of District Magistrate, Hathras, therefore, asking the proof of flooding in the area was just to confuse the issue and to further pressurize to give new premium to the opposite party.

On 08-02-2008 the Head Claims of opposite party no.2 has illegally rejected the settled and agreed claim of the complainant on flimsy grounds. It is further submitted by the complainant that the complainant always maintained from beginning that the losses suffered by the complainant were caused due to accumulation of water i.e. inundation as



a result of heavy rains but in order to confuse the matter, surveyor and the opposite party kept on saying that there was no flood in the area. The surveyor took more than one year in submitting his report whereas under any circumstances the report was required to be submitted within six months from his deputation. It is provided in clause 9 of I.R.D.A. Regulation 2002. The I.R.D.A. Regulation 2002 opposite parties were required to pay claim within 30 days from the date of receipt of survey report. Since, the surveyor had submitted his report on 27-08-2007, therefore, opposite parties were under legal obligation to pay or reject the claim within stipulated time. The Regulation 2002 empowers insurer to obtain additional survey report, in case he finds that the report is incomplete in any respect but no such report was called for. In reply to the complainant's letter dated 24-03-2008, the Head Claims of opposite party no.2 vide their letter dated 16-05-2008 informed the complainant for rejection of claim on two counts only i.e. monsoon rains and due to allowing traffic on wet road. Surprisingly, two major allegation for rejection of claim i.e. defective design of work and defective workmanship and material as mentioned in their earlier rejection letter dated 08-02-2008 were withdrawn. This clearly shows that the opposite parties wanted to somehow reject the complainant's claim as the complainant had not given new premium to them. Since the complainant is an experienced construction company equipped with latest machinery and well trained manpower, therefore, could manage to minimize the loss without any law and order problem. The complainant was doing patch work continuously to avoid any possible major accident. The instant complaint is well within the statutory limitation of 2 years as the claim has been finally rejected by the opposite parties vide their letter dated 16-05-2008. This Commission has both territorial as well as pecuniary jurisdiction to entertain and adjudicate the present complaint.

In support of the complaint case the complainant has filed the following documents.

Photocopy of the Contractor All Risk Insurance Policy.



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Photocopy of letter dated 27-12-2006 issued by J. N. Sharma & Co. to the complainant for providing information/clarifications.

Photocopy of letter dated 12-02-2007 written by complainant to M/s. J N Sharma & Co. regarding submission of clarification.

Photocopy of Survey Report dated 27-08-2007.

Photocopy of letter dated 15-09-2007 issued by the complainant to the surveyor regarding reminder for payment of settled claim.

Photocopy of letter dated 15-10-2007 issued by O.P. No.2 to the complainant asking to submit proof of flooding in the area.

Photocopy of letter dated 27-11-2007 of the complainant regarding reply of letter dated 15-10-2007.

Photocopy of meteorological report.

Photocopy of letter dated 08-02-2008 regarding repudiation of claim.

Photocopy of letter dated 24-03-2008 written by complainant to the O.P.

Photocopy of letter dated 16-05-2008 issued by Opposite Party to the complainant regarding rejection of claim on two counts only.

The opposite party IFFCO Tokio General Insurance Company Limited has filed written statement thereby stating that there is neither any deficiency in the services of the opposite party in settlement of claim nor any alleged unfair trade practice on the part of the opposite party. The complainant failed to adopt such 'modus operandi' while executing rehabilitation work on sport. It is stated that there may had rains on 09/10-07-2006 and 27/28-07-2006 but it is denied that the rains were extra ordinary resulting into inundation on road under work. The complainant has deliberately failed to disclose the date of intimation of loss to the opposite party which is the crux of the matter. The surveyor assessed the loss at Rs.68,51,441/- but is subject to acceptance of liability by the opposite party. The complainant has given consent for the assessment amount of Rs.68,51,441/-. It is further submitted that the complainant failed to provide any documentary evidences as required by opposite party vide letter dated 15-10-2007 which was issued by the



opposite party as last tool or chance to complainant to rectify the defects of his claim so that opposite party may reconsider it's expected final decision to deny claim as the claim was apparently out of ambit of the policy. The Metrological Monsoon Rainfall Record is not an evidence to establish flooding/inundation of the area due to normal rains. The claim has been repudiated as it was not falling within the four corners of policy conditions, the only basis of contract between the parties. The repudiation letter dated 08-02-2008 is detailed one, self explanatory and deals each and every aspect of the matter calling for denial of claim. The opposite party or surveyor ever settled or agreed to the claim for Rs.68,51,441/-. The complainant has failed to substantiate his stand with any documentary evidence that the loss is caused due to the inundation of water due to heavy rains. It is submitted that the complainant has failed to follow the provided Modus Operandi of making highways while controlling traffic. The surveyor has explained in his report the cause for delay in report which was only due to non cooperation and delayed response of the complainant to the queries of the surveyor. The opposite party has not violated any rule of I.R.D.A. On receipt of the survey report, opposite party issued letter dated 15-10-2007 seeking clarification/stand of the complainant on such points and in absence of those, the claim was told to be no within policy condition. The complainant replied the letter of opposite party dated 15-10-2007 as late as on 27-11-2007 and thereafter several meeting were held between opposite party and complainant but complainant having failed to satisfy the queries of opposite party substantially with factually and legally acceptable documents and explanation, the opposite party ultimately having no alternative, repudiated the claim vide detailed letter dated 08-02-2008. The complaint is bad for non joinder of The Governor of U.P., through Chief Engineer, (World Bank Project), U.P. P.W.D., Nirman Bhawan, 96, M.G. Road, Lucknow. It is evident from claim intimation letter dated 23-08-2006 the complainant basically admits that damage caused is due to rain fall but thereafter under ill intentions with after thought averments changes stand that cause of loss was heavy



flooding/inundation on road due to heavy rains on 09-07-2006 and 28-07-2006 on the site of work done in order to cover the claim under policy conditions. It is further submitted that General Condition 01 (GC 01) of policy makes mandatory for the insured to observe and fulfil the terms and conditions of policy strictly. The alleged losses dated 09-07-2006 and 28-07-2006 were first time brought to the notice of opposite party by the complainant after 45 days and 26 days respectively and such delayed intimation is in clear violation of related provision for notification period of loss to insurer by insured as is provided under policy i.e. General condition no. 05 (GC-5). The opposite party shall not in any case be liable for loss, damage or liability of which no notice has been received by the opposite party within 14 days of its occurrence. The complainant was expected to provide evidence to substantiate the occurrence of flood on either of said two dates such as any photographic evidence of any flood having occurred, any meteorological evidence of any flood having occurred, any press report that contain any suggestion of any flood. In case of immediate intimation about said flood in the area, the opposite party must have immediately deputed surveyor to have a look of the spot. The complainant should have done so in order to avoid any ambiguity in the matter to claim indemnity from opposite party fairly. Such right of opposite party has been completely prejudiced with such highly delayed intimation. It is further submitted that it is evident that the damages, if any caused are due to normal monsoon rains attributed to atmospheric conditions and such type of losses are specifically excluded under the policy conditions, i.e. Exclusion 'C', Section-I. The complainant has deliberately violated the related rules and guidelines laid down by Ministry of Shipping, road Transport and Highways for the contractors in "Specifications For Road and Bridge Works" published by India Roads Congress, New Delhi-2001. It is submitted by the opposite party that the possible causes for the damages are due to defective design of work by complainant, use of defective workmanship and materials by the complainant, non provision of an alternative route for traffic and the road was put to use. It is further



submitted by the opposite party that the surveyor has categorically concluded in his report that the damage cannot be attributed to flooding/inundation but it was due to continued usage of road during normal monsoon rains whereby the damage caused by normal rains would not be covered under the policy. Neither any evidence could be noticed by the surveyor to establish flooding/inundation on spot nor any such evidence could be produced by the complainant. There is no deficiency in services of the opposite party either in processing the claim or in its settlement leading to denial of liability which has been done by the opposite party after detailed investigation and number of discussions with the authorized and technical representatives of the complainant over the matter. The complainant has no cause of action and grievance against the opposite party to seek redressal by invoking jurisdiction of this Commission under the Consumer Protection Act and the same is liable to be dismissed. The complaint is beyond the scope of adjudication by this Commission as the insurance coverage was obtained for commercial activities and the complainant is earning huge profits from such commercial activities and therefore the complainant is not the consumer within the meaning of Consumer Protection Act.

The following documents have also been filed by the opposite parties alongwith the written statement.

Photocopy of letter dated 08-11-2005 written by the complainant to the opposite party regarding sending of premium cheque and proposal form.

Photocopy of Proposal Form for Contractor's All Risk Insurance.

Photocopy of Contractor All Risk Insurance Schedule.

Photocopy of Instalment Schedule for Section I & II.

Photocopy of Contractor All Risk Endorsement alongwith the paper attached to and forming part of the policy.

Photocopy of letter dated 23-08-2006 written by the complainant to the opposite party regarding intimation of loss amounting to Rs.1,11,00,000/- due to road damage.

Photocopy of Survey Report dated 27-08-2007.





Photocopy of Metrological Monsoon rainfall Record.

Photocopy of repudiation letter dated 08-02-2008.

Photocopy of Specifications for Road and Bridge Works.

Photocopy of letter dated 24-03-2008 written by complainant to opposite party regarding review of claim.

Photocopy of letter dated 16-05-2008 written by opposite party to the complainant regarding inability to consider the claim.

**Evidence by the complainant**

Reply to the written statement filed by the opposite parties, with evidence in support of the complaint case has been filed by Sri Ashwani Rawat, S/o Sri D P Rawat on behalf of complainant thereby stating that the contents of written statement are absolutely incorrect and misconceived.

Additional Evidence has also been filed on behalf of the complainant alongwith following documents.

Photocopy of Resolution dated 20-10-2009 of the board of the complainant company.

Photocopy of Resolution dated 14-07-2007 of the board of the complainant company for the change of name.

Photocopy of Memorandum of Association and Article of Association of the complainant company.

**Evidence by Opposite Party**

An affidavit in evidence on behalf of the opposite party, sworn by Sri Saikar Sarkar, S/o Late Sri A N Sarkar, Authorised Signatory, IFFCO Tokio general Insurance Company Limited, has been filed.

We have heard Sri Dhruv Kumar, learned Counsel for the complainant and Sri Ashok Mehrotra, learned Counsel for the opposite party and perused the entire record including the evidence and written arguments of both the parties.

Learned Counsel for the complainant submitted that the complainant had obtained a Contractor All risk Policy from the opposite party no.1 and it was valid for the period from 09-11-2005 to 30-09-2007. The policy covered the risk to the tune of Rs.26,50,10,339/- and a sum of



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Rs.11,29,095/- was paid to the opposite party as premium. Learned Counsel pleaded that as per policy condition if any damage caused due to flood/inundation and for other reasons, the opposite party shall pay the compensation. Section-I of the policy condition clearly defines as under:

'The Company hereby agrees with the insured (subject to the exclusions and conditions contained herein or endorsed hereon) that if, at any time during the period of insurance stated in the said Schedule, or during any further period of extension thereof the property (except packing materials of any kind) or any part thereof described in the said schedule be lost, damaged or destroyed by any cause, other than those specifically excluded hereunder, in a matter necessitating replacement or repair the Company will pay or make good all such loss or damage upto an amount not exceeding in respect of each of the terms specified in the Schedule the sum set opposite thereto and not exceeding in the whole the total sum insured hereby.'

Learned Counsel further submitted that due to heavy rains and inundation on 09/10-07-2006 and 27/28-07-2006 the complainant suffered loss and this fact proves from the Metrological Monsoon Record dated 01-07-2006 and 15-08-2006 issued by District Magistrate, Hathras. On the request of the complainant the opposite party deputed Sri J L Sharma & Company, Surveyor for assessing the loss. The surveyor vide letter dated 27-12-2006 asked the complainant to submit clarification on some points and the same has been submitted by the complainant on 12-02-2007. The complainant submitted final claim bill for Rs.1,49,19,330/- but the surveyor has assessed the gross loss for Rs.1,00,11,120/- and after deduction consent for Rs.68,51,447/- has been taken from the complainant. . The surveyor assessed the loss based on bill of quantity (BOQ) and not on Standard Data Book. Although, Ministry of Road Transport and Highways has prescribed the rates in Standard Data Book. The surveyor was of the opinion that insurer's liability would increase in case rates were taken according to standard data book. Learned Counsel for the complainant further argued that after prolonged correspondence and discussions with the opposite party and surveyor, the surveyor settled



the claim for Rs.68,51,441/-. It is pleaded that after getting the survey report the opposite party should have paid the settled amount of Rs.68,51,447/- but the opposite party instead of paying the aforesaid sum pressurize the complainant to give new premium to the opposite party. The opposite party six months after getting the survey report repudiated the claim of the complainant on 08-02-2008 thereby mentioning the four reasons (a) Your defective design of the work (b)Your use of defective workmanship and materials (c) Your non provision of an alternative route for traffic and (d) the fact that the road was put to use. On persuasion of the complainant the opposite party further considered the matter of the complainant and repudiated the claim finally on 16-05-2008 on two counts i.e. grounds (1) Monsoon rains and (2) Damage/peeling off of the top surface of the asphalt was due to plying of vehicular traffic on wet roads and resultant wear and tear. Learned Counsel further stated that the surveyor has also observed in his report that on 9<sup>th</sup> and 28<sup>th</sup> July, 2006 there was heavy downpour allegedly resulting in flooding of road causing major damage to the portion of road from chain age no.221 to 204 (Hathras to Kasganj). The surveyor has categorically mentioned in his report that complainant firm is well equipped with latest road construction machinery and committed technical/professional manpower. Not only this all norms of contract were being followed by the complainant. Learned Counsel further pleaded that as regards non provision of alternative route and use of road is concerned, it was clarified to the opposite party no.2 vide letter dated 24-03-2008 that it was beyond their control to stop the use of road as it would have been major law and order problem. The P.W.D. was closely monitoring the situation to avoid traffic jam on highway. The complainant did his best to minimize the loss besides preventing any major accident, or law and order problem. Moreover, providing alternative route in those circumstances or stopping traffic on the highway was beyond the reach of the complainant. Therefore, instead of stopping the traffic completely, took precautionary measures by putting barrier to minimize the loss.

Learned Counsel for complainant further more submitted that after



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inordinate delay the claim was repudiated by the insurance company on false and flimsy grounds and the entire procedure adopted by the opposite party is in complete contravention of the provisions of the Insurance Act as well as its allied rules and regulations. The IRDA (Policy Holders Interest) Regulations, 2002 under Clause 9(5) mandate for the disposal of the claim within a period of 30 days from the report of the surveyor or an additional survey report. The surveyor was appointed by the Insurance Company and the report has been submitted by him that is after about a year from his appointment. The clause 9(2) of the IRDA mandate that the surveyor shall submit his report within 6 months from the date of appointment. Thus the opposite party flouted all the mandatory provisions of the regulations laid down for the disposal of the claim and decided the claim in a most illegal and arbitrary manner and to this effect the opposite party committed gross deficiency in service.

Learned Counsel for the complainant went further submitting that Section 64 UM(2) of the Insurance act, 1938 mandate the insurer to obtain a report of the licensed surveyor and loss assessor in case of the settlement of claim valuing more than Rs.20,000/-. Section 64-UM(2) of the Act 1938 reads as under:

*'No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968 shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who hold a license issued under this section to act as a surveyor or loss assessor (hereafter referred to as approved surveyor or loss assessor).*

*Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any*



*amount different from the amount assessed by the approved surveyor or loss assessor”.*

Learned Counsel for the opposite party has argued that the allegations made in the complaint are highly derogatory as there was neither any deficiency in service nor any alleged delay or unfair trade practice and the complaint has been filed only to create pressure upon the opposite party. The complainant has failed to substantiate and support ‘modus operandi’ while executing rehabilitation work on spot after the alleged heavy and extraordinary rains on 9/10-07-2006 and 27/28-07-2006 resulting into inundation on road under construction work and the complainant has also deliberately and intentionally failed to disclose the date of intimation of said loss to the opposite party. The surveyor assessed the loss of Rs.68,51,441/- but the assessment of loss by the surveyor is always subject to admissibility and acceptance of liability as per the terms and conditions of the policy by the insurer. The complainant gave consent for the assessed amount of Rs.68,51,441/- but the said consent was only for the assessed amount of loss and has nothing to do with admissibility of claim. The complainant failed to provide any documentary evidence as required by the opposite party vide letter dated 15-10-2007 which was finally issued to the complainant to rectify the defects of his claim so that opposite party may reconsider its decision to deny claim as the claim was apparently out of ambit of the policy terms and conditions.

Learned Counsel for the opposite party further submitted that Metrological Monsoon Rainfall Record is not an evidence to establish flooding/inundation of the area and further more the opposite party denied that the opposite party asked for evidence to support alleged fact of flooding/inundation in the area. The opposite party never exerted any pressure upon the complainant to give new premium and only to confuse the issue such stand was taken by the complainant. It is submitted by the learned Counsel that the repudiation letter dated 08-02-2008 is quite detailed, self-explanatory and deals with each and every aspect of the matter calling for denial of claim. The opposite party categorically denied



that prior to 08-02-2008, the insurer or its surveyor ever settled or agreed for Rs.68,51,441/-. Even after repudiation the opposite party entertained the subsequent letter of the complainant and accordingly the opposite party again replied vide letter dated 16-05-2008 thereby explaining the cause of deny the liability in the light of 'Exclusion C' of the insurance policy contract. The complainant has grossly failed to substantiate his claim by any documentary evidence. It is further pleaded that the complainant failed to adhere and stick to all the norms of contract as were expected to be followed by the complainant in the given situation on spot. Had that been realistically followed and taking into account gravity of the situation then the loss might not have accrued and could have been minimized to its lowest ebb. The complainant failed to follow the provided Modus Operandi of making high ways while controlling traffic which realistically caused the loss to the undergoing construction work. The surveyor has explained in his report the cause for delay in report which was only due to non cooperation and delayed response of the complainant to the queries of the surveyor. The opposite party has not violated any rule of I.R.D.A. It is further submitted that on receipt of Survey Report the opposite party on 15-10-2007 sought clarifications from the complainant on certain points and in absence of those the claim was told to be not within policy condition. The complaint is bad for non joinder of The Governor of U.P., through Chief Engineer (World Bank Project), U.P. P.W.D. Nirman Bhawan, 96 M G Road, Lucknow.

Learned Counsel for the opposite party further more submitted that under insurance policy contract 'Flood/Inundation' is an insured peril to claim indemnity but for this, the insured has to substantiate claim with sustainable documents/evidence. But in this matter the complainant has grossly failed to do so inspite of several opportunities provided by opposite party as well as by the surveyor. To establish the damages due to flood/inundation on said two days i.e.9<sup>th</sup> or 28<sup>th</sup> July, 2006, the complainant was expected to provide evidence to substantiate the occurrence of flood on either of said two dates such as any photographic evidence of any flood having occurred, any press report that contain any



suggestion of any flood. Due to highly belated intimation of said losses caused due to alleged inundation, the opposite party could not have first hand evidence and observations of the spot and know the exact cause of loss. The complainant has deliberately done so in order to keep opposite party in dark under malicious intentions. In case of immediate intimation about said flood in the area, the opposite party must have immediately deputed surveyor to have a look of the spot. The complainant should have done so in order to avoid any ambiguity in the matter to claim indemnity from opposite party fairly. Such right of opposite party has been completely prejudiced with such highly delayed intimation. It is not possible to accept that there are no such evidences as pointed out hereinabove since the damages claimed are spread over such a distance of 65 kilometers. Even in case of flooding over such a widespread area, it must have caused disruptions but no such evidence. It is logical to conclude on the part of opposite party that there was no flood loss to claim indemnity under insurance policy contract. As per evidence available it is established that there were normal monsoon rains. As per evidence available it is established that there were normal monsoon rains and the complainant decided to carry out the work during the monsoon period when he was fully aware of the fact of likelihood of rains. Therefore, it is evident that the damages, if any caused are due to normal monsoon rains attributed to atmospheric conditions. Such type of losses are specifically excluded under the policy conditions, i.e. Exclusion 'C'.

Learned counsel for opposite parties went further submitting that the causes of repudiation were communicated through detailed and exhaustive letters dated 08-02-2008 and 16-05-2008. The repudiation of claim has been done after application of mind which is further supported with the facts and various terms, conditions and exclusions of insurance policy. Further more, the complaint is not maintainable as insurance coverage was obtained for commercial activities and the complainant is earning huge profits from such commercial activities and therefore the complainant's case being not a consumer dispute is baseless, misconceived and has been filed only to extract money from the company



by way of pressure tactics. As such, the complaint being devoid of merits deserves to be dismissed with cost in favour of the company.

After hearing of both the parties and perusal of the aforesaid pleadings, evidence and written arguments of both the parties, we have found that the complainant had obtained a Contractor All risk Policy from the opposite party no.1 and it was valid for the period from 09-11-2005 to 30-09-2007 covering the risk to the tune of Rs.26,50,10,339/- on a sum of Rs.11,29,095/- paid as premium. As per policy condition, damage caused due to flood/inundation and for other reasons was covered. Policy condition clearly defines that if, at any time during the period of insurance the property (except packing materials of any kind) be lost, damaged or destroyed by any cause, other than those specifically excluded there under, the Company will pay all such loss not exceeding in the whole the total sum insured. Due to heavy rains and inundation during period of insurance the complainant suffered loss as this fact is very well proved from the Metrological Monsoon Record dated 01-07-2006 and 15-08-2006 issued by District Magistrate, The surveyor too assessed the gross loss for Rs.1,00,11,120/- out of which later on after some deductions and with the consent of the complainant loss was assessed to the tune of Rs.68,51,447/-. However on 08-02-2008 on the four reasons i.e. (a) defective design of the work (b) use of defective workmanship and materials (c) non provision of an alternative route for traffic and (d) the fact that the road was put to use, the claim has been repudiated by the opposite party. On persuasion of the complainant the opposite party further considered the matter of loss to the complainant and again repudiated the claim finally on 16-05-2008 restricting merely on two grounds i.e. (1) Monsoon rains and (2) Damage/peeling off of the top surface of the asphalt was due to plying of vehicular traffic on wet roads and resultant wear and tear. It shows that there is no dispute on rains but so far the other ground is concerned there is no evidence lead by opposite party to prove that due to plying of vehicular traffic on wet roads wear and tear were resulted. The surveyor himself observed in his report that





on 9<sup>th</sup> and 28<sup>th</sup> July, 2006 there was heavy downpour allegedly resulting in flooding of road causing major damage to the portion of road. More so, the surveyor has categorically mentioned in his report that complainant firm is well equipped with latest road construction machinery and committed technical/professional manpower, then, how it can be construed that the complainant failed to restrict plying of vehicular traffic on wet roads resulting wear and tear. Not only this, it was clarified by the complainant to the opposite party no.2 vide letter dated 24-03-2008 that it was beyond their control to stop the use of road as it would have been major law and order problem. The P.W.D. was closely monitoring the situation to avoid traffic jam on highway. The complainant did his best to minimize the loss besides preventing any major accident, or law and order problem. Moreover, providing alternative route in those circumstances or stopping traffic on the highway was beyond the reach of the complainant. Therefore, instead of stopping the traffic completely, took precautionary measures by putting barrier to minimize the loss. This much version of the complainant cannot be disbelieved there being the persons of the complainant on spot of construction of the road.

The contention of opposite party that complainant has failed to substantiate and support 'modus operandi' while executing rehabilitation work on spot after the alleged heavy and extraordinary rains on 9/10-07-2006 and 27/28-07-2006 resulting into inundation on road under construction work is not acceptable in the aforesaid scenario of the facts there being no person of the opposite party on spot to observe it.

This much contention of the opposite party that the complainant has failed to disclose the date of intimation of said loss to the opposite party has no weight in the light of this fact that the surveyor himself inspected the spot of occurrence and submitted the report thereby assessing the loss of Rs.68,51,441/-. No doubt the assessment of loss by the surveyor is always subject to admissibility and acceptance of liability as per the terms and conditions of the policy by the insurer as is contended by the opposite party but since the complainant gave consent for the assessed amount of Rs.68,51,441/-, the said consent cannot be believed to have been given



merely for the assessment of amount of loss by the surveyor and not for the amount agreed to receive in settlement between the parties as the surveyor himself has assessed the loss to the tune of Rs 1,00,11,120/- against the claim of complainant to the tune of Rs. 1,49,19,330/- and certainly that consent was sought by the opposite party for admitting the claim of the complainant to the tune of Rs. 68,51,441/-, otherwise there would have been no occasion for consent of the complainant to that amount.

Opposite party's contention that Metrological Monsoon Rainfall Record is not an evidence to establish flooding/inundation of the area has no force as there is no evidence on record to falsify such report. Hence we conclude that the loss occurred to the complainant cannot be said worth refusal saying thereby that there was no flood loss to claim indemnity under insurance policy contract and that the damages, if any caused are due to normal monsoon rains attributed to atmospheric conditions and such type of losses are specifically excluded under the policy conditions, i.e. Exclusion 'C'.

The contention of opposite party that the complainant failed to adhere and stick to all the norms of contract as were expected to be followed by the complainant in the given situation on spot is also not acceptable in absence of any disclosure by the opposite party as to what type of particular norms should have been adopted by the complainant which could have not been adopted. Non joinder of The Governor of U.P., through Chief Engineer (World Bank Project), U.P. P.W.D. Nirman Bhawan, 96 M G Road, Lucknow does not render the complaint bad being the Governor not the necessary party in this case.

So far this question, that the complaint is not maintainable as insurance coverage was obtained for commercial activities and the complainant is earning huge profits from such commercial activities and therefore the complainant's case is not a consumer dispute, is concerned, in this regard the law is to be perused wherein The Hon'ble National Commission in Harsolia Motors versus National Insurance Company



Limited I (2005) CPJ 27 (NC) was occasioned with the question whether the Insurance Policy purchased by commercial units amounts to commercial purposes, the question was answered in negative, it was held that the policy of insurance is intended for the indemnification of loss and no commercialization of service is involved in the case.

*“Further, hiring of services of the Insurance Company by taking insurance policy by Complainants who are carrying on commercial activities cannot be held to be a commercial purpose. The policy is taken for reimbursement or for indemnity for the loss which may be suffered due to various perils. There is no question of trading or carrying on commerce in insurance policies by the insured. May be that insurance coverage is taken for commercial activity carried out by the insured.”*

*“In Regional Provident Fund Commissioner v. Shiv Kumar Joshi, III (1999) CPJ 36 (SC)=X (1999) SLT 395=(2000) 1 SCC 98, the Court elaborately considered the provisions of Sections 2(1)(d) and 2(1)(o) as well as earlier decisions and held that—*

*“The combined reading of the definitions of ‘consumer’ and ‘service’ under the Act and looking at the aims and object for which the Act was enacted, it is imperative that the words ‘consumer’ and ‘service’ as defined under the Act should be construed to comprehend consumer and services of commercial and trade-oriented nature only. Thus any person who is found to have hired services for consideration shall be deemed to be a consumer notwithstanding that the services were in connection with any goods or their user. Such services may be for any connected commercial activity and may also relate to the services as indicated in Section 2(1)(o) of the Act.”*

*The aforesaid ratio makes it abundantly clear that services may be for any connected commercial activity, yet it would be within the purview of the Act.”*

We have further found that after inordinate delay the claim was repudiated by the insurance company on false and flimsy grounds and the entire procedure adopted by the opposite party is in complete contravention of the provisions of the Insurance Act as well as its allied rules and regulations. The IRDA (Policy Holders Interest) Regulations, 2002 under Clause 9(5) mandate for the disposal of the claim within a period of 30 days from the report of the surveyor or an additional survey report. The surveyor was appointed by the Insurance Company and the report has been submitted by him that is after about a year from his appointment. The clause 9(2) of the IRDA mandate that the surveyor shall submit his report within 6 months from the date of appointment. Thus the



opposite party flouted all the mandatory provisions of the regulations laid down for the disposal of the claim and decided the claim in a most illegal and arbitrary manner and to this effect the opposite party committed gross deficiency in service.

Section 64 UM(2) of the Insurance act, 1938 mandate the insurer to obtain a report of the licensed surveyor and loss assessor in case of the settlement of claim valuing more than Rs.20,000/-. Section 64-UM(2) of the Act 1938 reads as under:

*'No claim in respect of a loss which has occurred in India and requiring to be paid or settled in India equal to or exceeding twenty thousand rupees in value on any policy of insurance, arising or intimated to an insurer at any time after the expiry of a period of one year from the commencement of the Insurance (Amendment) Act, 1968 shall, unless otherwise directed by the Authority, be admitted for payment or settled by the insurer unless he has obtained a report, on the loss that has occurred, from a person who hold a license issued under this section to act as a surveyor or loss assessor (hereafter referred to as approved surveyor or loss assessor).*

*Provided that nothing in this sub-section shall be deemed to take away or abridge the right of the insurer to pay or settle any claim at any amount different from the amount assessed by the approved surveyor or loss assessor".*

Looking in to the entire facts and circumstances as are narrated above we found this complaint worth to be allowed for a claim at least to the tune of Rs 68,51,441/- assessed by surveyor and agreed by complainant along with interest at least @ of 9 % PA.

### ORDER

The complaint is hereby allowed. Opposite parties are directed to pay an amount of Rs. 68,51,441/- within two months along with 9 % PA



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interest from the date of this complaint till the payment is made, failing which the interest as awarded shall be payable @ 14 % PA.

A sum of Rs 30,000/- shall also be paid by the opposite parties to the complainant as litigation charges for this complaint.

  
( JUSTIVE VIRENDRA SINGH )  
PRESIDENT

  
( JUGUL KISHORE )  
MEMBER

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