

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**RESERVED ON : 30.04.2025**  
**PRONOUNCED ON : 23.05.2025**

**REVISION PETITION NO. 3725 OF 2017**

(From the order dated 01.09.2017 in F.A. No. 30/2017 of the  
State Consumer Disputes Redressal Commission, Chhattisgarh)

The New India Assurance Co. Ltd.  
Divisional Office, Sattigudi Chowk  
Raigarh, Chhattisgarh

Through

The New India Assurance Co. Ltd.  
Jeewan Raksha Building  
12/1, II Floor, Asaf Ali Road,  
New Delhi

..... Petitioner

**Versus**

1. Ajay Agarwal, S/o Shri M.R. Agarwal,  
M/s Bajrang Motors Pvt. Ltd.,  
Authorised Service Station,  
Ashok Leyland Ltd., Jindal Road,  
Raigarh, District Raigarh  
Chhattisgarh

2. Union Bank of India  
Through Branch Manager,  
Itwari Bazar, Naya Ganj  
Raigarh, District Raigarh,  
Chhattisgarh

..... Respondents

**BEFORE:**

**HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER**  
**HON'BLE JUSTICE DR. SUDHIR KUMAR JAIN, MEMBER**

For the Petitioner : Mr. Parveen Kumar Mehdiratta, Advocate

For the Respondent(s) : Mr. Anand Shankar Jha, Advocate &  
Ms. Meenakshi S. Devgan, Advocate  
for R-1(vc)

NEMO for R-2

### **ORDER**

#### **HON'BLE DR. INDER JIT SINGH, PRESIDING MEMBER**

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent(s) as detailed above, under section 21(1)(b) of Consumer Protection Act 1986, against the order dated 01.09.2017 of the State Consumer Disputes Redressal Commission, Raipur, Chhattisgarh (hereinafter referred to as the 'State Commission'), in First Appeal (FA) No. 30/2017 in which order dated 22.11.2016 of District Consumer Disputes Redressal Forum, Pandri, Raipur (hereinafter referred to as District Forum) in Consumer Complaint (CC) no. 10/2015 was challenged, inter alia praying to set aside the order passed by the State Commission and dismiss the complaint.

2. While the Revision Petitioner (hereinafter also referred to as OP-1) was Respondent-1; Respondent-1 (hereinafter also referred to as Complainant) was Appellant and the Respondent-2 (hereinafter also referred to as OP-2) was Respondent-2 in the said FA/30/2017 before the State Commission. The Revision Petitioner was OP-1; Respondent-1 was Complainant and Respondent-2 was OP-2 before the District Forum in the CC no. 10/2015.

3. Notice was issued to the Respondent(s) on 26.03.2018. Parties filed Written Arguments/Synopsis on 27.09.2023 (Petitioner/OP-1) and 24.01.2025 (Respondent-1/Complainant) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:-

The Complainant, M/s Bajrang Motors Private Limited, an authorised service centre of Ashok Leyland engaged in servicing heavy vehicles and selling spare parts and lubricants, had obtained a business loan from OP-2, Union Bank of India, and regularly submitted stock statements in compliance with banking norms. Prior to the alleged incident, the Complainant submitted the stock position as on 30.06.2013. A Shopkeeper's Insurance Policy was procured by the Complainant from OP-1 through OP-2 for the period 03.07.2013 to 02.07.2014. In the intervening night of 29/30.07.2013, due to heavy rainfall in Raigarh, rainwater entered the Complainant's workshop/shop/godown, causing severe damage to the stored spare parts and lubricants. The incident was promptly reported to OP-1 and to the local police station, which estimated the loss to be in the range of Rs. 20-25 lakhs. The Complainant filed a claim with relevant documents, estimating the loss at Rs. 15,15,061/-. However, OP-1 paid only Rs. 5,09,000/- on 09.12.2013 via RTGS. Alleging non-payment of the balance amount and terming such conduct as deficiency in service and

unfair trade practice, the Complainant filed the complaint seeking appropriate reliefs.

5. Vide Order dated 12.01.2015, in the CC no. 10/2015 the District Forum has dismissed the complaint.

6. Aggrieved by the said Order dated 12.01.2015 of District Forum, Petitioner/OP-1 appealed in State Commission and the State Commission vide order dated 25.03.2017 in FA No. 30/2017 has allowed the appeal and directed:-

(i) OP-1 to pay a sum of Rs. 2,08,060/- to the complainant, in addition to Rs. 5,09,000/- which was paid by the OP-1 to the complainant through R.T.G.S.

(ii) OP-1 to pay interest @ 9% p.a. on Rs. 2,08,060/- from date of filing of complaint i.e. 12.01.2015;

(iii) OP-1 to pay a sum of Rs. 7,000/- towards cost of litigation.

7. The core issue for adjudication is the deduction of Rs. 2,08,060/- on account of underinsurance, calculated at 27.3% in the surveyor's report. Against the Complainant's claim of Rs. 15,15,061/-, the Insurance Company disbursed Rs. 5,09,000/- based on a surveyed loss of Rs. 7,62,125/-, from which the underinsurance deduction was applied. While the District Forum dismissed the complaint, the State Commission, on appeal, directed payment of the deducted sum with 9% interest. The Insurance Company relies on the surveyor's computation of stock on the date of loss (29.07.2013) at Rs. 1,03,11,638/-, derived from the opening stock as on 01.04.2013,

adjusted for purchases and sales up to the incident date. However, the same report reflects that monthly stock statements from April to July 2013 indicated average stock levels between Rs. 75 lakhs and Rs. 76.81 lakhs, and the surveyor himself acknowledged the average stock during the relevant period ranged from Rs. 75 to 77 lakhs. Nevertheless, the surveyor adopted a higher stock valuation for the loss assessment, deviating from the contemporaneous monthly records.

8. OP-1 has challenged the said Order dated 01.09.2017 of the State Commission mainly on following grounds:

(i) State Commission erred in law and failed to appreciate that the insured stock was admittedly overvalued by more than 27.3% of the sum insured, thereby establishing a clear case of underinsurance. As per the settled terms and conditions of the insurance policy, the proportionate deduction for underinsurance, rightly applied by the Surveyor, ought to have been considered. The Commission also disregarded the policy excess deduction of 5%, amounting to Rs. 27,703/-, which the Surveyor had duly subtracted in his assessment. Furthermore, the Commission overlooked the fact that the complainant had accepted the Surveyor's report dated 09.11.2013 and the assessed amount was transferred via RTGS on 09.12.2013, with no contemporaneous objection raised.

(ii) The complaint was lodged only on 12.01.2015, over a year later, and was rightly dismissed by the District Forum. The

impugned order has been passed in a mechanical and perverse manner, without due appreciation of the policy terms, Surveyor's findings, or the absence of deficiency in service. The assessment made by the Surveyor was based on facts and contractual obligations, whereas the State Commission relied on conjecture and surmises, thus rendering the impugned order dated 01.09.2017 unsustainable in law and liable to be set aside, with the well-reasoned order of the District Forum deserving restoration.

9. Heard counsels of Petitioner and Respondent-1. Respondent-2 was proceeded ex-parte on account of absence despite service. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

- (i) The learned counsel for the Petitioner/OP-1 argued that the complainant, the proprietor of M/s Bajrang Motors Pvt. Ltd., an authorised service centre of Ashok Leyland, obtained a "Shopkeeper's Insurance Policy" from the OP-1 covering stock and premises for the period 03.07.2013 to 02.07.2014 for a sum insured of Rs. 75,00,000/-. Following water ingress on 29.07.2013/30.07.2013 due to heavy rainfall, damage to spare parts and lubricants stored in the shop/workshop was reported, and a claim was lodged. An independent surveyor appointed by the OP-1 assessed the stock position as on 29.07.2013 to be Rs. 1,03,11,638.28/- which exceeded the insured value by over 27.3%, thereby establishing a case of underinsurance. The

surveyor assessed the total loss at Rs. 7,62,125/- and after applying deductions towards underinsurance (Rs. 2,08,060/-) and policy excess (Rs. 27,703/-), advised settlement for Rs. 5,26,362/- less salvage value, and a net amount of Rs. 5,09,000/- was paid to the Complainant via RTGS on 05.12.2013 without any objection.

- (ii) More than a year later, the Complainant filed a consumer complaint on 12.01.2015 before the District Forum, which was dismissed on 22.11.2016, holding that the OP-1 had settled the claim in accordance with the Surveyor's findings and there was no deficiency in service. However, in Appeal, the State Commission held that the deduction towards underinsurance was unjustified and directed payment of Rs. 2,08,060/- with interest. State Commission failed to consider that underinsurance is calculated at the time of loss assessment, not at the inception of the policy, as held by the Hon'ble Supreme Court in **Sikka Papers Ltd. v. National Insurance Co.**, (2009) 7 SCC 777, wherein it was affirmed that when the sum insured is less than the actual value, liability of the insurer is limited proportionately. The counsel further asserted that, complainant knowingly under-declared the value of stock, resulting in a lower premium, and is consequently bound by the terms of the policy. The Surveyor's assessment was accepted by complainant, who provided bank details and received the settlement amount without protest. The belated filing of the complaint more than a year after full and final settlement was

clearly an afterthought and rightly rejected by the District Forum.

(iii) The learned counsel for the complainant/Respondent-1 argued that the OP-1 had deducted Rs. 2,08,060/- towards alleged underinsurance, based solely on the 'Shopkeeper's Insurance' coverage, without furnishing the schedule of insured premises or substantiating the basis of such deductions. The Surveyor's report failed to provide cogent justification or evidentiary basis for the extrapolated stock valuation of Rs. 1,03,11,638.28/- as against the declared insured sum of Rs. 75,00,000/-. The calculation of underinsurance @ 27.3% was based on arbitrary estimations and lacked documentary support. The disallowance of items such as lubricants and oils, on the ground that they were stored outside the insured shop premises, was erroneous and contrary to the terms of the policy. The physical location of goods within the operational premises of the service centre, integral to the insured's business, does not exclude them from the scope of coverage. The Surveyor's conclusion that items placed in the adjoining garage area were beyond the policy coverage is unsustainable.

(iv) In **New India Assurance Co. Ltd. v. M/s Madhav Automotive Fasteners**, FA/1791/2018, NCDRC, decided on 08.04.2024, it was held that deductions made without reliable evidence or clarity under the terms of the policy are unjustified. Likewise, in **Sumit Kumar Saha v. Reliance General Insurance Co. Ltd.**, (2019) 16 SCC 370, the Hon'ble Supreme

Court held that once the insured value is mutually agreed upon by the insurer and the insured, it cannot later be unilaterally challenged in the absence of fraud or misrepresentation. In the instant case, it is not in dispute that, at the time of issuance of the insurance policy, the employees of OP-1 had personally verified and accepted the Complainant's stock valuation. The said valuation expressly included the very goods which the insurer now seeks to exclude from the scope of coverage. Having thus acknowledged and agreed to the inclusion of these goods in the insured inventory at the inception of the policy, the insurer is estopped from repudiating liability in respect thereof, in the absence of any allegation of fraud or misrepresentation on the part of the Complainant. Therefore, the subsequent deduction of Rs. 2,08,060/-, made without any convincing or policy-based justification, is manifestly arbitrary and unjustified. The State Commission, therefore, rightly held that such deduction was improper and rightly directed that the Complainant's claim be restored to the said extent.

10. We have carefully gone through the orders of the State Commission, District Commission, and other relevant records. The argument that the complainant lost the right to make a claim by accepting the RTGS payment is not legally valid. It is now well-established that merely signing a discharge voucher or quietly accepting a payment does not prevent an insured person from pursuing legal remedies under the law. This is unless the insurer can prove that the acceptance was voluntary, clear, and informed. The burden of proof lies on the insurer to show that the insured willingly

and knowingly gave up their rights. The letters and emails on record clearly show that the insured person repeatedly disagreed with the amount offered and filed the consumer complaint within two years of the last denial of the claim. This meets the requirement under Section 24-A of the Consumer Protection Act. Although a surveyor's report is important evidence, it is not final or unquestionable. Both this Commission and the Hon'ble Supreme Court have held that surveyor reports can be disregarded if there are valid reasons.

11. In this case, the surveyor himself noted that the monthly stock statements for April to July 2013 showed average stock worth between Rs. 75 lakh and Rs. 76.81 lakh, which matched the sum insured of Rs. 75 lakh. However, he chose to estimate the value at Rs. 1.03 crore on the date of the loss without any documents to support it. This created a false shortfall of 27.3% in insurance coverage and reduced the compensation unfairly. This method violates the principle laid down in **Sikka Papers Ltd. v. National Insurance Co.** (2009) 7 SCC 777, in which the Hon'ble Supreme Court held that compensation must be based on the actual value of the goods on the date of loss, not on guesses or assumptions. Further, when both the insurer and the insured have agreed on the value of insurance and accepted it freely, neither party can later back out from that value unless there is fraud involved. Therefore, the deduction of Rs. 2,08,060/- has no legal justification and must be rejected.

12. As for the location of the damaged goods, insurance contracts must be interpreted by the clear words used in the contract. Any unclear language is usually interpreted against the insurer (as per the

**contra proferentem** rule). Here, the premium chart and the policy schedule clearly describe the insured property as the "shop premises" measuring 20 × 18 feet. The stock kept in the nearby garage, although used for the same business, was not covered because it was not mentioned in the policy. The surveyor's decision to exclude items like gear-oil and engine-oil found in that garage is consistent with the terms of the policy, and the District Forum correctly upheld this exclusion. The complainant has not produced any endorsement, additional clause, or survey report from the relevant time to show that the policy covered this extra space. Therefore, the insurer cannot be held responsible for those goods. After considering all aspects, the Commission accepts the surveyor's calculation of the loss as Rs. 7,62,125/- for goods located within the insured shop. However, the Commission rejects the deduction for under-insurance and restores the disallowed amount of Rs. 2,08,060/-. Since Rs. 5,09,000/- was already paid on 09.12.2013, the remaining payable amount is Rs. 2,08,060/-. In line with the interest rate applied by the State Commission and the principle stated in **Modi Dyeing & Bleaching Works v. National Insurance Co.** (CC No. 434 of 2016, NCDRC, decided on 29.10.2021) which clarified that interest is a fair way to compensate for delayed payment, the complainant is entitled to interest at the rate of 9% per annum from the date the claim was settled until the date of actual payment.

13. The Revision Petition is dismissed. The challenge raised by the Petitioner (OP-1) to the disallowance of the underinsurance deduction of Rs. 2,08,060/- is rejected, and the direction of the State Commission for payment of the said amount is upheld. Accordingly,

the order of the State Commission is upheld. OP-1 is directed to pay Rs. 2,08,060/- to the Complainant, along with interest at the rate of 9% per annum from 05.12.2013 until the date of actual realization. However, if the payment is not made within six weeks from the date of this order, the amount payable at the end of six weeks shall carry interest at the rate of 12% per annum from the expiry of six weeks from the date of this order until payment.

14. The pending IAs in the case, if any, also stand disposed off.

Sd/-

.....  
( DR. INDER JIT SINGH )  
PRESIDING MEMBER

Sd/-

.....  
( DR. SUDHIR KUMAR JAIN, J. )  
MEMBER

Ajay/jr