

Non-reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 913 OF 2023

**UNITED INDIA INSURANCE CO. LTD.
AND ANOTHER**

..... Appellants

Versus

M/S. PARK LEATHER INDUSTRIES LTD.

..... Respondent

J U D G M E N T

SANJAY KUMAR, J

1. United India Insurance Co. Ltd. is in appeal under Section 23 of the Consumer Protection Act, 1986, against the judgment dated 01.08.2022 passed by the National Consumer Disputes Redressal Commission, New Delhi (for brevity, 'NCDRC'), in Consumer Complaint No. 171 of 2008 filed by the respondent herein, viz., M/s. Park Leather Industries Ltd., Agra.

2. While issuing notice in the appeal on 06.02.2023, this Court stayed the operation of the impugned judgment, subject to the the appellant depositing 50% of the amount awarded within a time frame. Upon such

deposit being made, the same was directed to be invested in a fixed deposit with auto-renewal facility. Thereupon, the appellant deposited ₹57,12,874/- with the Registry and the same was placed in a fixed deposit. As on date, the deposit value stands at ₹63,60,833/-.

3. The respondent filed the subject complaint before the NCDRC under Section 21(a)(1) of the Consumer Protection Act, 1986. Therein, it stated that it had taken a comprehensive insurance policy from the appellant against fire and special perils and the policy was operative from 30.06.2005 to 29.06.2006. While so, due to heavy rainfall during the night of 01.08.2005, the factory shed of the respondent collapsed, causing damage to plant & machinery, stocks and buildings. In consequence, the respondent raised an insurance claim for ₹91,00,000/- The appellant appointed a surveyor to quantify the damage suffered by the respondent and he assessed the loss suffered at ₹8,89,176/-. However, the appellant ultimately repudiated the claim of the respondent under its letter dated 19.12.2006, stating that the loss suffered was not due to the insured peril of 'inundation' and would, therefore, fall outside the purview of the policy.

4. Aggrieved by such repudiation, the respondent had approached the NCDRC. It reiterated its claim for the loss suffered by it due to inundation, quantified at ₹91,50,000/-, along with interest and costs. The appellant

contested the case, pointing out in its reply that its surveyor had assessed the loss at ₹8,89,176/- but it was determined that the loss might have occurred due to gradual weakening of the walls and seepage, which would not be covered by the insurance policy. The appellant, accordingly, asserted that there was no deficiency in service on its part. The respondent filed a rejoinder to the appellant's reply. Therein, for the first time, the respondent stated that it had engaged an independent surveyor who had confirmed that the damage was caused by inundation and assessed the loss at ₹46,97,085/-. The respondent stated that its premises were renovated in 2003 and the insured shed/factory buildings were in sound condition, obviating the possibility of collapse due to weakening of walls or seepage.

5. By the impugned judgment, the NCDRC held that the appellant was liable to compensate the respondent under the insurance policy for the damage and loss suffered by it. As regards the quantum of compensation, the NCDRC stated, in paragraph 24 of the judgment, as under:

'Regarding the question of compensation, the Surveyor appointed by the Complainant assessed the loss at Rs.46,97,085/-. In the written statement, filed by the Insurance Company they have not stated that the assessment made by the Surveyor deputed by the Complainant was wrong. Since the Insurance Company has not disputed the assessment made by the Surveyor appointed by the Complainant, the Complainant is entitled to the said amount of Rs.46,97,085/-.'

6. The NCDRC, accordingly, directed the appellant to pay ₹46,97,085/- to the respondent with interest thereon @ 9 per cent p.a. from the date of repudiation till the date of realization. In the event, the order was not complied with in 8 weeks, the appellant was directed to pay enhanced interest @ 12 per cent p.a.

7. Learned counsel for the appellant fairly states that the appellant is not contesting its liability to pay compensation under the insurance policy, as decided by the NCDRC. He would, however, state that the issue of the quantum of compensation has not been dealt with properly by the NCDRC. We find merit in this contention.

8. Paragraph 24, extracted *supra*, demonstrates that the NCDRC decided the quantum of compensation only on the premise that the appellant had not denied, in its written statement, the assessment made by the respondent's surveyor. However, the NCDRC completely lost sight of the fact that the aforestated figure of ₹46,97,085/- was sourced from the surveyor's report which was produced by the respondent, for the first time, along with its rejoinder. Therefore, the appellant could not have denied it in its written statement, which was filed earlier in point of time.

9. Having noted that the surveyor appointed by the appellant had assessed the damage at a much lesser figure, i.e., ₹8,89,176/-, the NCDRC

could not have assumed that the appellant had mutely accepted the enhanced estimation of ₹46,97,085/-, as per the unilateral assessment made by the surveyor appointed by the respondent. It is not in dispute that this assessment was undertaken by the respondent's surveyor without putting the appellant on notice and without its participation.

10. In any event, it is patently clear that the NCDRC did not independently apply its mind to the quantification of the claim and blindly acted upon the alleged failure of the appellant to deny the assessment in the surveyor's report produced by the respondent. This impression, as pointed out earlier, was unfounded and erroneous. It would, therefore, be just and proper that the NCDRC undertakes that exercise now, by allowing the parties to adduce evidence in that regard, and then decide the amount that would be payable to the respondent under the insurance policy.

11. The appeal is accordingly allowed to that extent and the matter is remitted to the NCDRC for consideration afresh of the quantum of compensation that would be payable to the respondent under the subject insurance policy for the damage and loss suffered by the respondent due to the collapse of the factory shed on 01.08.2005. Given the antiquity of this case, we would request the NCDRC to give it priority and dispose of the same expeditiously.

12. The amount deposited by the appellant with the Registry, presently invested in a fixed deposit, shall abide by the final decision of the NCDRC. The Registry is directed to forthwith transfer the sum of ₹63,60,833/-, along with the interest accrued thereon, to the National Consumer Disputes Redressal Commission, New Delhi, under proper acknowledgement. The amount shall thereupon be invested in a fixed deposit with a nationalized bank with auto-renewal facility and shall await the final decision of the National Consumer Disputes Redressal Commission, New Delhi, in Consumer Case No. 171 of 2008.

Parties shall bear their own costs.

....., J
Sanjay Kumar

....., J
Augustine George Masih

**April 7, 2025;
New Delhi.**