

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 131 OF 2011**

(Against the Order dated 22/12/2010 in Complaint No. 17/2009 of the State Commission  
Chhattisgarh)

1. M/S. A. R. TRADING COMPANY

Through : Abdul Rashid,S/o :Shri Abdul Hafiz, Link  
Road, Opp. C.M.D.College

Bilaspur

Chhattisgarh

.....Appellant(s)

Versus

1. ORIENTAL INSURANCE COMPANY LIMITED

Through Divisional Manager,Korba

Korba

Chhattisgarh

2. Oriental Insurance Company Limited

Through its Branch Manager, Dr.Ambedkar Chowk,  
Manendragarh Road, P.o. Ambikapur

Sarguja

Chhattisgarh

3. Oriental Insurance Company Limited

Through Divisional Manager Bilaspur ,Rama Trade  
centre, Near Bus Stand

Bilaspur

Chhattisgarh

4. The Oriental Insurance Company Limited

Through Divisional Manager Bilaspur ,Rama Trade  
centre, Near Bus Stand

Bilaspur

Chhattisgarh

5. Conservator of Forests & General Manager

Vanopaj Sangh, Jagdalpur Circle

Jagdalpur

Chhattisgarh

.....Respondent(s)

**BEFORE:**

**HON'BLE MRS. M. SHREESHA, PRESIDING MEMBER**

**HON'BLE MR. ANUP K THAKUR, MEMBER**

**For the Appellant :** Mr. Navin Prakash, Advocate

**For the Respondent :** For the Respondent Nos.1 to3 : Mr. Manish Pratap Singh, Advocate  
For the Respondent No. 4 : Mr. Atul Jha, Advocate

**Dated : 17 Jun 2016**

**ORDER**

**ORDER**

**M. SHREESHA, PRESIDINGMEMBER**

For the reasons cited in the Affidavit, delay of 64 days in all the Appeals, is condoned.

2. Challenge in this First Appeal under Section 19 of the Consumer Protection Act, 1986 (for short the “Act”) by the Complainant, is to order dated 22.12.2010, passed by the State Consumer Disputes Redressal Commission, Chattisgarh, Raipur (for short the ‘State Commission’) in Complaint Case Nos. 15 to 18 of 2009. By the impugned order, the State Commission dismissed the Complaint on the ground that there was no deficiency of service on behalf of the Insurance Company in repudiating the claim.

3. Since all the four Appeal Nos. 129 of 2011, 130 of 2011, 131 of 2011 and 132 of 2011 deal with common facts and common cause of action and survey report is also common, all the Appeals, are being disposed of by this common order.

4. The brief facts as set out in the Complaint are that the Complainant is a proprietor of M/s. A.R. Trading Company and his main occupation was to purchase Tendu Leaves, plucked from the forest, from the Government and sell it to Bidi manufacturing Companies. It is stated that during the months of May-June, the leaves are plucked by the tribals from the forest and sold at the scheduled collection centres of the Government. The fourth Opposite Party, i.e. the Forest Department, Sales, had sold the said Tendu Leaves to the Complainant. It is averred that the Complainant had taken 1916.845 standard bags of Tendu Leaves from the Forest Department at lot No. 51-A, Kukanar and the same was kept in the godown of the society, in village Tongpal. It is pleaded that the Complainant had got the said bags of Tendu Leaves insured covering the period from 18.5.2007 till the midnight of 17.5.2008 under ‘Standard Fire and Special Perils Policy’.

5. The Complainant averred that after procuring the Tendu Leaves, they are dried, made into bundles and kept in bags safely in the said godowns in the custody of the employees of the

fourth Opposite Party. While so, in the month of December, 2007, at the time of selling the Tendu Leaves, the Complainant observed that the leaves had turned black due to natural calamity, on account of excessive rain fall in that area and hence had become unfit for making Bidis. Therefore, the Complainant submitted claim form on 24.12.2007 to the Second Opposite Party which was repudiated by the first and third Opposite Parties vide their letter dated 13.5.2008, on the ground that leaves were contaminated on account of absorption of moisture from the atmosphere, which is not covered under the Policy.

6. It is specifically pleaded by the Complainant that there was an increase in the moisture content of the atmosphere in the area of Jagdalpur during the months of July to October, 2007 due to excessive rainfall. Since the Tendu Leaves are dried, they naturally absorbed the moisture present in the atmosphere and turned black due to excessive moisture content. At the time of issuance of the Policy, the Complainant was assured that if the Tendu Leaves were destroyed by any natural calamity, the Insurance Company would make good the losses. The Complainant averred that the said Tendu Leaves were purchased from the Fourth Opposite Party and as per the agreement executed, the Complainant had to pay the price in four instalments, otherwise the Opposite Party can initiate legal action to recover the said amount. The Complainant also claims 0.04% interest per day due to non-settlement of the claim for such a long period of time and seeks directions to the Insurance Company to pay the claim amounts of Rs.57 lakhs in CC No. 15 of 2009 in First Appeal No. 129 of 2011; Rs. 87 lakhs in CC No. 16 of 2009 in First Appeal No. 130 of 2011; Rs. 48 lakhs in CC No.17 of 2009 in First Appeal No.131 of 2011 and Rs.77,00,000/- in CC No. 18 of 2009 in First Appeal No. 132 of 2011 respectively together with interest, compensation and costs.

7. The Opposite Party/Insurance Company filed their written version admitting to the issuance of the policy, but submits that in the said policy, the insurance company had undertaken to cover the risk arising out of fire, lightning, storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation, but as per exception 4 of the policy it is not obligatory on part of the insurance company to cover the loss, destruction or damage caused to the insured property by pollution or contamination or natural rain or moisture. Due to this reason the claim of the Complainant has been rejected by letter dated 13.05.2008 by the insurance company after investigation and this fact has been intimated to the complainant by the insurance company through registered post, which in any manner whatsoever does not come under the category of deficient service.

8. It is further averred that the Surveyor Sh. H.H. Chitalia, who investigated the matter had submitted his report that the Tendu leaves had got rotten due to the presence of moisture in the atmosphere. It is pleaded that the Complainant's claim had been rejected under the stipulated conditions of the Policy which does not constitute deficiency of service and therefore, the Insurance Company sought for dismissal of the Complaint with costs.

9. The State Commission dismissed the Complaints on the ground that the Standard Fire and Special Perils Policy covers the risk of *fire, lightning, storm, cyclone, tempest, hurricane, tornado, flood and inundation* . As per the GENERAL EXCLUSION CLAUSE NO. 4 of the insurance policy, *loss, destruction or damage caused to the insured property by pollution or contamination if loss to the insured property is due to natural rains or moisture* , then it was not covered. The State Commission further observed as follows:

*“As per affidavit dated 06.08.2010, of Shri Hitesh Chitalia, Surveyor, who had surveyed the spot to assess the loss of insured Tendu leaves, in para 2 stated that loss to the insured property of the complainant was due to moisture of weather and not due to water of rains. The said surveyor in his report dated 15.03.2007 has mentioned the facts and circumstances of loss to the questioned Tendu Leaves and also given his observations. In the concluding para he stated that;*

*"In my opinion, it is a genuine occurrence of contamination of Tendu Leaves stored in two godowns, as accepted by insured, but outside scope of policy conditions to make loss compensate, hence I recommend, Insurer to repudiate the claim as not payable in my opinion."*

*From the aforesaid report of Surveyor and from the conditions of the insurance policy, it is evident that when loss to the questioned Bidi leaves had resulted in itself due to moisture and was not due to the covered risk of Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and inundation, then in terms of condition no.VI of policy, it was not covered. Therefore we hold that loss to the insured tendu leaves was not covered by the questioned insurance policy and as such the insurance company has not committed deficiency in service by repudiating the claim of the claimant”.*

10. While dismissing the Complaints, the State Commission observed that the Complainants are at liberty to seek remedy against the Fourth Opposite Party from any appropriate forum, if so advised.

11. Aggrieved by the said Order, the Complainant preferred these Appeal.

12. The learned counsel for the Appellant submitted that the repudiation by the Insurance Company is totally unjustified as it is stated by their own surveyor that he had carefully inspected the subject godown and found the stock of all tendu leaves affected due to contamination on account of moisture collection from the atmosphere. Learned counsel argued that the surveyor has stated in his report that the condition of all the tendu leaves was in good condition at the time of collecting and processing them and that they were found in a damaged condition as on 24.12.2007 only. He further submitted that there was a specific pleading in the Complaint with respect to excessive rain fall in the area, as a result of which the dried tendu leaves had absorbed the prevailing moisture.

13. Learned counsel for the Respondent/Insurance Company submitted that as the damage to Tendu Leaves was not on account of *storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation* but instead, the peril was on account of moisture content in the bags of Tendu Leaves, their repudiation is justified. He further argued that the godown was four feet above the ground and therefore, it was not possible for the flood/rain water, if any, to have entered the insured premises.

14. It is observed from the record that indeed there was a specific pleading in para-3 of the Complaint that the Tendu Leaves had turned black due to natural calamities of absorbing the prevailing moisture, caused *due to excessive rain fall in that area* and have become unfit for making bidis. It is pertinent to note that in the written version filed by the Opposite Party, there is no such denial with respect to excessive rain fall in that area at that point of time. In the written version and also in the **affidavit filed by the Insurance Company**, it is stated that Exclusion Clause 4 of the Policy covers loss, destruction or damage caused to the insured property by pollution or contamination **or natural rain or moisture**. But the General Exclusion Clause 4 (a) & (b) reads as follows:

“(a) pollution or contamination which itself result from a peril hereby insured against

(b) Any peril hereby insured against which itself result from pollution or contamination”.

**It is pertinent to note that this natural rain or moisture does not figure in the General Exclusion Clause 4 (a) and (b) filed before this Commission.**

15. The repudiation letter reads as follows:

Annexure ‘G’

**“THE ORIENTAL INSURNACE COMPANY LIMITED**

Registered Office Oriental House

A-25/27, Asaf Ali Road,

New Delhi – 110 002

Branch Office- Dr. Ambedkar Chowk, Manendgarh Road Ambikapur 497 001

Phone No. – 07774-230493, 230047

Registered/A.D

13.05.2008

Subject: Fire Insurance Claim No. 11/2008/001, 02,03,04 policy no. 152402/11/2008/96,97,98,99 dated of accident 24.12.2007.

Sir,

With reference to the aforesaid, you are hereby informed that your claim has been rejected by the Competent Officer due to the following reasons:-

1. That as per the survey/inspection report of the surveyor the insured bidi leaves covered under the aforesaid fire insurance policy have not rotten because of rain but due to the presence of moisture. This is not a risk covered under the conditions of the fire insurance policy. The amount claimed is not payable, therefore, the claim application is being rejected by the Competent Officer.

Forwarded for your information.

“Thanking you”

Yours sincerely

Sd/- Illegible

Branch Manager

16. In the afore-mentioned repudiation letter, it is clearly stated that the Tendu Leaves have not rotten because of rain but due to the presence of moisture. To reiterate, this element of rain fall has not been specifically excluded in the General Exclusion Clause No. 4 and further when it was specifically pleaded by the Complainant which has not been rebutted by the Insurance Company in their written version. In the Claim (Annexure ‘E’), it is stated that the damage is caused by rain water. In the ‘Description of circumstances leading to the loss’, it is stated that Tendu Leaves had turned black due to excessive rain and effect of moisture. A brief perusal of the Surveyor Report shows the circumstances and cause of loss as follows:

**“CIRCUMSTANCES & CAUSE OF LOSS :**

*As per statement of Insured’s Proprietor Mr. Abdul Rashid,*

1. *That he has purchased Tendu leaves of four lots of 2007 season*

*In April and May 2007 as under:*

1. Lot No. 49 B Gadiras - 2868.68 Std. bags
2. Lot No. 50 A Padwaras - 2414.76 Std. bags
3. Lot No. 51 A Kukanar - 1916.845 Std. bags
4. Lot No. 50 B Padwaras - 1774.14 Std. bags

*All above purchase stored in two places, Kurundi & Tongpal godown from May to June 2007, till that time it was in good condition as per their observations.*

*When they inspected the stored Tendu leave bags on 24/12/2007, he observed that quality of all Tendu leaves became down/black in colour and not suitable to its purpose i.e. to manufacture Beedi. It became damaged due to good rain fall and atmosphere containing moisture contacted with the stored Tendu leaves in Jute Bags and contamination resulted in damages to quality of Tendu leaves. Thus insured suffered loss of all stored Tendu leaves of all four lots, placed at both godown as mentioned above due to moisture grasping of Tendu leaves from atmosphere, which is not covered in policy perils of insurance policy attached herewith. Policy covers only those loss which is due to*

1. Fire
2. Lightening
3. Explosion/Implosion
4. Air Craft Damage
5. Riot, Strike, Malicious an Terrorism damage
6. Storm, Cyclone, tempest, Hurricane, Tornado, Flood and Inundation
7. Impact damage
8. Subsidence and landslide including Rockslide
9. Bursting & overflowing of water tank
10. Misslile Testing operation
11. Leakage from Auto sprinkler installation
12. Bush fire

*Loss to insured due to contamination is not covered in above causes/perils. However, insurer mentioned General Exclusion of Policy in Clause 4.*

*It is established and declaration of Insured itself loss due to moisture Grasping from atmosphere and contaminated itself w/o application of any Abnormal situation of natural calamities, which is not under scope of policy coverage.*

**NATURE & EXTENT OF LOSS/DAMAGE**

*I have inspected all the godown involved and found storage as mentioned above is true, but not assessed the loss as cause of loss is outside scope of policy.*

**OBSERVATIONS :**

- 1. I have carefully inspected the involved godown during my visit to Jagdalpur, Kurundi, Tongpal, Sukma from 20.2.08 to 25.02.08, and found stock of all Tendu leaves affected due to contamination as moisture collection from atmosphere, as no any sweepage or building leakage during rainy season observed.*
- 2. No any floor or inundation observed during the season.*
- 3. No any storm, Cyclone, Tempest Hurricane, Tornado, Impact or malicious damages observed by insured.*
- 4. It is true that while collecting/processing from forest upto storage in godown, the condition of all the Tendu leaves were in good condition as per insured's and security guard Damru's statement during storage period only it damaged slowly from May, 2007 to December, 2007 when insured checked his stock of Tendu leaves and observed damaged on 24.12.2007.*
- 5. I observed that partial quantity of Tendu leaves may utilize for commercial purpose by reducing rates for which it may be done negotiation, but in this case loss assessment is not recommended if loss is not covered in policy perils.*

**LOSS ASSESSMENT :**

*I have not assessed the loss as not required/recommended as loss is outside scope of policy, insurer is not liable against this claim as per my opinion.*

**CONCLUSION :**

*In my opinion, it is a genuine occurrence of contamination of Tendu leaves stored in two godowns, as accepted by insured, but outside scope of policy conditions to make loss compensate, hence I recommended insurer to repudiate the claim as not payable in my opinion”.*

17. It is seen from the Survey Report that though there was a specific averment that it had become damaged due to rain fall and atmosphere containing moisture, the Surveyor had not



assessed the loss observing that there was no inundation, storm, cyclone, tempest, hurricane, tornado, impact or malicious damages.

18. In the instant case, we find that this Commission had occasion to deal with a similar type of case in the case of “M/s. National Insurance Co. Ltd. V. Marthi Crystal Salt Co. Ltd., 1986-2002 Consumer 6043 (NS)” and “United India Insurance Co. Ltd. V. Dipendu Ghosh and Anr.” II (2009) CPJ 311 (NC), wherein this Commission has interpreted the word ‘Direct Cause’ as appears in the terms of the Policy and had recorded as under:

Learned Counsel for the respondent brought on record the copy of ‘P. Ramanatha Aiyar’s The Law Lexicon, Law Dictionary’. As per this dictionary, the word ‘direct cause’ as well as ‘Direct and proximate cause’ has been defined as under:

‘Direct Cause’ -that which sets in motion train of events which brings about result without intervention of any force operating or working actively from new and independent source’ or, one without which the injury would not have happened. Norbech V. Mutual of Omaha Ins. Co., 3 Wash. App 582, 476 p 2d, 546, 547 (Black’s Law Dictionary)

19. The direct and proximate cause in this case for the rotting of Tendu Leaves is the rainfall which had occurred during the same period. It is not disputed, as per facts brought on record by the Counsel for the petitioner, that there was rainfall in that area during that period and it is pleaded that on account of rain, the dried Tendu Leaves absorbed the moisture and got rotten.

20. We are unable to accept the interpretation/contention of the Surveyor/ Appellant - Insurance Company. In a number of cases under almost identical circumstances where claims had been repudiated under the Fire and Special Perils Policy on the ground that the damage caused to the insured stocks/ premises had been caused because of seepage caused due to heavy rains and not due to inundation, floods etc., we had concluded that the claim was wrongly repudiated since flood/inundation also means outpouring of water. On this analogy loss caused due to moisture content following heavy rains would be covered and the claim should in such circumstances be indemnified. Some specific judgments wherein we had reached the above conclusions include Bajaj Allianz General Insurance Co. Ltd. Vs. Gondamal Hardy Mal (MANU/CF/0039/2009: IV (2009) CPJ 165 (NC); New India Assurance Co. Ltd. Vs. Dani Mourdhwaj Cold Storage Pvt. Ltd. (RP No. 4113 decided on 10.02.2012); and Oriental Insurance Co. Ltd. Vs. M/s. Sathyarayana Setty & Sons (RP No. 3454 of 2007 decided on 14<sup>th</sup> March, 2012). *In the instant case, since it is not in dispute that the damage was caused by moisture on account of rainfall, we are of the view that it would be logically covered under the policy even though it may not per se have been listed as one the perils of the insurance policy.*

21. In the light of all the afore-mentioned evidence on record, the fact that the specific pleading by the Complainant that there was excessive rainfall which was not rebutted by the Insurance

Company, the repudiation by the Insurance Company that the Tendu Leaves had not rotted because of rain but only due to moisture is without any substantial basis.

22. Having regard to the fact that the incident had occurred in the year, 2007 and the Surveyor had also given his report on 15.3.2007 without assessing the loss, any direction to assess the loss at this juncture, would be unexecutable. In the light of this observation and also having regard to the fact that it is of the year, 2007 and also that the Complainant had not filed the exact rate at which the lot of Tendu Leaves was purchased, we find it just and expedient to allow 50% of what the Complainant has claimed, as equitable in each case.

23. Keeping in view the afore-mentioned facts, case against fourth Respondent is dismissed.

24. In the result, these Appeals are allowed in part and orders of the State Commission are set aside and consequently the Complaints are partly allowed directing Respondents/Opposite Parties 1,2 and 3, that is Insurance Company to pay to the Complainant the following amounts:

- i. Appeal No. 129 of 2011 in C.C. No. 15 of 2009, 50% of the claim amount of Rs. 57,00,000/- = Rs. 28,50,000 with 6% p.a. from the date of repudiation i.e. from 13.5.2008 till the date of realisation together with costs of Rs. 10,000/- ;
- i. Appeal No. 130 of 2011 in C.C. No. 16 of 2009, 50% of the claim amount of Rs. 87,00,000/- = Rs. 43,50,000 with 6% p.a. from the date of repudiation i.e. from 13.5.2008 till the date of realisation together with costs of Rs. 10,000/- ;
- i. Appeal No. 131 of 2011 in C.C. No. 17 of 2009 , 50% of the claim amount of Rs. 48,00,000/- = Rs. 24,00,000 with 6% p.a. from the date of repudiation i.e. from 13.5.2008 till the date of realisation together with costs of Rs. 10,000/- ;
- i. Appeal No. 132 of 2011 in C.C. No. 18 of 2009 , 50% of the claim amount of Rs. 77,00,000/- = Rs. 38,50,000/- with 6% p.a. from the date of repudiation i.e. from 13.5.2008 till the date of realisation together with costs of Rs. 10,000/-.

25. All the afore-mentioned amounts are directed to be paid within six weeks from the date of receipt of this order failing which the amounts would attract interest at 9% per annum.

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**M. SHREESHA**  
**PRESIDING MEMBER**  
.....J  
**ANUP K THAKUR**  
**MEMBER**