

Gopal Dikshit Vs. United India Insurance Company Ltd.

Civil Appeal No. 6623 of 2025 · Supreme Court of India · 2025-05-19 · B.V. Nagarathna · Satish Chandra Sharma · F2J-C-1500

Full judgment text

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[Civil Appeal No. 6623 of 2025]

Satish Chandra Sharma, J.

1. The present appeal under Section 23 of the Consumer Protection Act, 1986 (hereinafter the "Act") arises out of the impugned order dated 07.12.2022 passed by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (hereinafter "NCDRC") in Consumer Case No. 2287 of 2017 whereby NCDRC dismissed the complaint filed by the Appellant.

FACTUAL MATRIX

2. The complainant who is the Appellant herein is the owner of the premises situated at 50, Ishwar Nagar, Mathura Road, New Delhi, 110065 (hereinafter "Premises"). The Premises had a basement, ground floor, first floor and second floor. The entire building was insured with the opposite party who is the Respondent herein vide House Holder Insurance Policy No. 2219042615P115431073 for Rs. 1.50 crores which was valid for the period from 13.03.2016 to 12.03.2017.

3. It is the case of the Appellant that due to a heavy downpour in New Delhi from 25.08.2016 to 31.08.2016, the Premises were severely flooded. During this period, the Appellant was out of Delhi from 24.08.2016 to 29.08.2016. Upon his return, he found that the basement of the Premises was inundated with water, resulting in extensive damage to the furniture, fittings, almirahs, books, and other belongings stored there. In an effort to prevent further deterioration, the Appellant installed a booster pump on 30.08.2016 to drain out the water from the basement. Despite this measure, the accumulated floodwater could not be completely drained out. Thereafter, the Surveyor, Mr. Akash Chopra, visited the Premises on 03.09.2016 and inspected the basement.

4. On 04.09.2016, the Appellant contacted Ms. Indu Singh by phone to inquire about the outcome of the survey conducted by Mr. Akash Chopra. Ms. Singh informed him that the report prepared by Mr. Chopra was not satisfactory and, therefore, she would assign another Surveyor to revisit the premises and reassess the damage. The Appellant also requested a copy of the preliminary survey report, but the Respondent did not provide it, avoiding the request without offering any explanation.

5. Second Surveyor, Mr. R.K. Singla visited the Appellant's Premises and conducted the survey again. In the meanwhile, the surveyor who visited the site on 03.09.2016, submitted its report on 06.09.2016 which stated that the cause of loss was due to heavy rain in Delhi on 25.08.2016 and water entered from the flooring, resulting in damages to the insured building and contents.

6. Additionally, on 07.09.2016 the Appellant sought the opinion of two structural engineers concerning the safety of the Premises. The opinion given by both of them indicated that the building was no longer fit for habitation and had become structurally unsafe and concluded that the Premises had to be vacated immediately and recommended that it be demolished and reconstructed.

7. On 10.09.2016, the Complainant once again contacted Ms. Indu Singh to inquire about the status of the survey. She reiterated that the report was not satisfactory and requested the Appellant to visit her office on 12.09.2016 to clarify certain points. During this meeting, Ms. Indu Singh informed the Complainant that, due to the use of the term "seepage" in the survey reports, the insurance claim would not be admissible. Consequently, the final survey report was submitted on 18.10.2016.

8. Subsequently, on 23.11.2016, the Appellant received a letter from the Respondent formally repudiating the claim. The rejection was based on the ground that the damage to the building was caused by continuous seepage of water from the basement, which was not listed as a named peril under the insurance policy, therefore, the resulting loss or damage was not indemnifiable.

9. Being aggrieved and dissatisfied by the dismissal of the Appellant's claim, Consumer Case No. 2287 of 2017 was filed before NCDRC. However, the said complaint was dismissed by the NCDRC, which gives rise to the instant appeal.

10. Before delving into the merits of the case, we would like to consider the submissions made by the parties.

SUBMISSIONS MADE BY THE APPELLANT/COMPLAINANT

11. The learned counsel for the petitioner submitted that judgments of NCDRC have consistently held that "flood" means outpouring of water and on this analogy, it would include both inundation and seepage. Reliance was placed on *United India Insurance Co. Ltd. v. Dipendu Ghosh & Anr.* reported in II (2009) CPJ 311 (NC).

12. Moreover, it was submitted that NCDRC ought to have relied on the Meteorological Department Report stating that Delhi had rainfall during the period of 25.08.2016 to 31.08.2016. It was further submitted that it is a common practice in Delhi that on a particular day certain portions of Delhi received scanty rainfall whereas other pockets received heavy rainfall. In the case of the Appellant, the Ishwar Nagar area received heavy rainfall and as such there was flooding in the area.

13. Furthermore, the Appellant submitted that "seepage" refers to the slow and gradual flow of liquid from a source. In the present case, the basement had accumulated over 3 feet of water within a span of just three days while the Appellant was away from Delhi. The Appellant respectfully contended that such rapid and substantial flooding cannot be classified as "seepage" as seepage does not result in the sudden inundation of a basement with three feet of water.

14. It was further submitted that in case there was seepage water in the basement, the same ought to have attracted the attention of the Appellant earlier and he ought to have taken adequate remedial measures to stop the seepage and not allowed the water to retain in the premises and get his belongings damaged.

15. Moreover, the first surveyor visited the site on 03.09.2016 while the 2nd Surveyor visited the site only on 09.09.2016 i.e. 10 days after the reporting of the incident to the Respondent. It was respectfully submitted that no prudent person would allow the water to stay in the premises for 10 days and further facilitate in destroying his belongings kept in the basement. The NCDRC ought to have relied on the Survey Report dated 06.09.2016 rather than the Survey Report dated 18.10.2016. It may not be out of place to state that once the survey was conducted on 09.09.2016, there was no occasion to submit the report on 18.10.2016 i.e. more than one month after conducting the survey. The same smacks of mala fide intentions on the part of the Respondent.

16. It was further contended that in its Report dated 06.09.2016, the Surveyor specifically states that the cause of loss was:

"Due to heavy rains in Delhi on 25.08.2016 the water entered from the flooring, resulted in damages to the insured's building and contents."

It is submitted that the Survey Report dated 06.09.2016 was never taken into consideration by the Respondent and instead the Respondent opted to go for another survey which was conducted 10 days after the incident occurred.

17. Moreover, the report of the engineer only stated the condition of the building which had nothing to do with the seepage water in the basement. In this behalf it was submitted that the Certificates issued by M/s Unique Consulting Engineers dated 07.09.2016 states that:

"Further, existing building was constructed having RCC frame. As time passes structure became old resulting corrosion in reinforcement due to water seepage in structural elements, i.e. reducing the strength of building. Hence, it is strongly recommended to dismantle existing building and reconstruct to meet present seismic parameters of the National Building Code of India; 2009."

The said report only states the structural condition of the building and further states that there is water seepage in structural elements (not basement) which includes the iron rods etc., which are inserted in the soil. The said report nowhere discusses anything about the condition of the basement of the building. In the respectful submission the NCDRC had wrongly relied on the said Report to reject the legitimate claim of the Appellant.

18. Further, it was submitted that Surveyors appointed by the Respondent had categorically stated in their reports that there was heavy rainfall on 25.08.2016. It was submitted that the basement of the Appellant was perfectly dry when he left on 24.08.2016 but after his return on 29.08.2016 he found that the basement was flooded with water with water marks on the walls up to the window height.

19. It was submitted that it is not in dispute that the basement was flooded with water. The Respondent has denied the claim of the Appellant on the ground of seepage and appointed multiple surveyors, however, not once the Respondent has or their surveyors tried to trace the source of the water, nor appointed anybody to trace the source of water. The Respondent is completely silent about the source of water in the basement. The same is unfair practice on the part of the Respondent.

SUBMISSIONS MADE BY THE RESPONDENTS

20. Learned counsel for the Respondent vehemently argued that even if "seepage" encompasses both inundation and seepage, it is pertinent to note that each case is distinct and should be evaluated/assessed based on its individual set of circumstances and the specific terms laid out in the contract. Further, the case law cited by the Appellant in this context does not establish a universal interpretation applicable to all cases. It was submitted that the applicability of such precedents should be evaluated within the framework of the unique insurance policy under consideration. It was further submitted that the specific terms and conditions of the policy do not encompass seepage as a covered peril. Consequently, the rejection of the Appellant's claim aligns with the policy's provisions.

21. Further, it was contended that it is crucial to address the fact that the Appellant's claim timeline, ranging from 25th to 31st August 2016, raises substantial questions regarding its reliability and consistency, leaving room for doubt as to whether it was introduced as an afterthought to buttress its claim by the Appellant. It is submitted that upon thorough examination of the Meteorological Report dated 25th to 31st August, 2016, submitted by the Appellant, it was observed by NCDRC that there is no mention of heavy rainfall on 25.08.2016. The relevant portion of the impugned order is reproduced hereinbelow for the sake of convenience:

"17. The Complainant, however, in the Consumer Complaint, alleged that the loss was caused during the period from 25th to 31st August, 2016, which appears to be an afterthought. We have carefully gone through the Meteorological Report dated 25th to 31st August, 2016, filed by the Complainant. Nowhere in the report is it mentioned that there was heavy rains on 25th August, 2016. The Policy covered the risk due to flood and inundation, amongst others. Meteorological Report does not show that there was such heavy rain in the area leading to flooding. Admittedly, the loss was caused due to seepage.

The certificate of International Consultants and Technocrats Pvt. Ltd. dated 06.09.2016 as well as certificate issued by Unique Consulting Engineers dated 07.09.2016 make it abundantly clear that there was continuous ingress of seepage water into the foundation and basement, which corroded the reinforcement steel, making it weaker to sustain loads, especially the lateral loads. As seepage of water was not named in the insured perils, the Opposite Party rightly repudiated the claim."

It was further submitted that while the insurance policy encompassed coverage for risks associated with flood and inundation, among other perils, the Meteorological Report did not provide substantial evidence to support the occurrence of significant rainfall in the specific area leading to flooding. It is pertinent to mention that the primary cause of the loss was attributed to seepage. This attribution is firmly supported by the certificates issued by both the structural engineers. Both certificates unequivocally confirm the existence of a continuous ingress of seepage water into the foundation and basement, which consequently resulted in the corrosion of the reinforcement steel.

This corrosion, in turn, compromised the building's structural integrity, particularly in its capacity to withstand loads, especially lateral ones. It is imperative to stress that the insurance policy did not explicitly include seepage of water among the insured perils. Consequently, the insurance company's decision to repudiate the claim was a justifiable response, consistent with the policy's terms and conditions and the distinct circumstances surrounding the loss.

22. Moreover, the Respondent considers it imperative to emphasize that the interpretation of "seepage" as a gradual process aligns with the prevailing circumstances in this case. The understanding of seepage, especially in the context of a basement or foundation, acknowledges its potential for a prolonged occurrence, as water gradually infiltrates and accumulates. It is submitted that seepage is not confined to insignificant or minimal quantities of water, but rather refers to the

unauthorized infiltration of water into areas where it should not be, resulting in the progressive accumulation of water over time.

23. Furthermore, the certificates issued by International Consultants and Technocrats Pvt. Ltd. on 06.09.2016 underlines the continuous ingress of seepage water into the foundation and basement. It was also contended that the certificate issued by Unique Consulting Engineers dated 07.09.2016 accentuates that the building was designed according to the Indian Standard codes of the period when it was constructed in 1986.

However, with the revision of seismic parameters, the existing structure no longer meets the updated requirements. Furthermore, the structure has aged over time, resulting in corrosion of reinforcement due to water seepage, consequently reducing its strength. Therefore, these expert certificates affirm that the significant damage and structural deficiencies were primarily attributed to continuous seepage of water into the foundation and basement, turning seepage into a persistent issue rather than an abrupt or isolated event.

24. Moreover, regarding the escalation of the water level in the basement during the Appellant's absence, it can still be reasonably attributed to seepage as it is conceivable that the water had been gradually infiltrating the area for an extended period, ultimately leading to a substantial accumulation. Hence, the NCDRC rightly dismissed the complaint of the Appellant after appreciating facts and circumstances of the case and the evidence on records.

25. It was further contended that both the Preliminary Report and the Final Survey Report unequivocally identified the cause of the loss as continuous seepage of water into the foundation and basement of the affected building. These reports provide a clear and consistent account of the circumstances leading to the damage. Furthermore, it was noteworthy that there was no mention of heavy rainfall causing significant damage in The Times of India editions dated 26.08.2016 and 27.08.2016. The absence of any news reports documenting rainfall-related damage during the relevant period supports the conclusions drawn in the reports submitted by the insurance company.

26. Furthermore, in this case, the certificate issued by M/s International Consultants & Technocrats Pvt. Ltd. played a pivotal role in assessing the cause of the loss. The certificate indicated that continuous seepage of water into the foundation and basement was the primary cause of the damage, rendering the building structurally unsound.

DISCUSSION AND ANALYSIS

27. We have carefully considered the submissions and perused the impugned judgment and materials on record. The point at issue for consideration is, whether, the cause of loss to the premises is due to the seepage water or the heavy rains in Delhi. In considering the arguments advanced by the Appellant, we are of the considered opinion that the impugned order passed by NCDRC is liable to be set aside. We shall now examine the various certificates issued by different authorities in relation to the said premises.

(a) Observations made in the First Survey Report Dated 06.09.2016 - On perusal of the first survey report dated 06.09.2016 conducted by Mr. Akash Chopra on 03.09.2016, it can be observed that cause of loss noted in the report is heavy rains in Delhi on 25.08.2016, during which period, the water entered from the flooring and that resulted in damage to the Appellant's premises. It was further noted that based on the inspection, the report confirmed that water was found coming from the flooring and had not come from the main entrance and/or any openings. The aforesaid survey report was clear about the cause of loss to the said Premises.

(b) Observations made in the certificate issued by M/s International Consultants & Technocrats Pvt. Ltd. dated 07.09.2016 - On assessment of the amended certificate issued by them, which stated that the damage was due to the flooding of water into the basement which happened due to heavy rainfall, it can be comprehended that the damage to the premises was not due to seepage but was caused by flooding of water.

(c) Observations made in the certificate issued by Unique Consulting Engineers Dated 07.09.2016 - Upon a thorough review of the statement issued by them, it becomes evident that no causal link can be established between the subject matter of the certificate and the cause of damage that has occurred. The certificate in question specifically addresses water seepage affecting the structural elements of the building, noting a consequent reduction in the overall structural integrity.

However, it makes no reference whatsoever to the basement area or any damage that may have occurred therein. Thus, the aforesaid certificate fails to substantiate any connection between the structural issues and the cause of damage in question in the premises. Therefore, we cannot take into consideration the aforesaid certificate and we concur with the submissions made by the learned counsel for the Appellant that the report nowhere discusses anything about the condition of the basement of the building.

(d) Observations made in the certificate issued by M/s Chordia Engineering Consultancy Services Dated 22.09.2016 - This certificate clearly notes that during the site visit conducted by the concerned representative, the basement of the insured premises was found to be flooded. This flooding was attributed to a heavy downpour that had occurred in the last week of August. As per the observations recorded, the ingress of water into the basement was a direct result of this excessive rainfall. Thus, the certificate establishes that the cause of damage was not due to any structural failure or seepage water but rather a consequence of the intense rainfall experienced during that period.

28. Upon a careful examination of the material on record, including the first survey report and certificates submitted by various technical experts, it is evident that the cause of damage to the insured premises was the flooding of water into the basement due to heavy rainfall in Delhi during the relevant period. The First Survey Report dated 06.09.2016 clearly attributes the damage to rainwater entering through the flooring following the downpour on 25.08.2016.

Subsequently, the same cause is further corroborated by the certificates issued by M/s International Consultants & Technocrats Pvt. Ltd. and M/s Chordia Engineering Consultancy Services, both of which confirm that the flooding, and not seepage or structural failure, was the proximate cause of loss. Conversely, the certificate issued by Unique Consulting Engineers pertains solely to seepage affecting the structural elements of the building and is silent on the condition of the basement or the cause of damage in question. As such, this report does not assist in determining the cause of damage to the basement and therefore, as a result of such limitation, it cannot be relied upon for the present purpose.

Further, the learned counsel for the Respondent relied upon the judgment of this court in Mahavir Road and Infrastructure Private Limited v. Iffco Tokio General Insurance Company Limited (2019) 5 SCC 677. However, the set of facts of the relied upon judgment are different from the instant case. In the said case, the Surveyor recorded that there was no evidence of any damage on account of flood water and only surface damage was found. In the case at hand, from the evidence presented before us it can be concluded that the cause of damage to the premises is due to heavy rainfall accounting for flooding in the basement.

29. In view of the concurrent findings in the certificates and first survey report aforementioned, we conclude that the damage to the insured premises was not caused by any inherent structural defect or seepage, but was instead a direct consequence of the unprecedented and heavy rainfall experienced during the relevant period, which led to flooding of water into the basement.

30. Proceeding further, our attention is drawn to the final survey and assessment report dated 18.10.2016, which was prepared following a second survey conducted on the insured premises approximately ten days after the occurrence of the said incident. It is pertinent to note that the first survey, conducted promptly on 03.09.2016, had already comprehensively assessed the cause and extent of the damage, and there is nothing on record to suggest that it was deficient or incomplete in any manner.

Despite conducting a survey before, the Respondent proceeded to commission a second survey without furnishing any reasonable, cogent, or valid grounds justifying the necessity for a reassessment. Subsequently, the second survey report dated 18.10.2016 deviated from the reasons of the first survey report and curiously recorded that the damage to the premises was caused by seepage, rather than by flooding due to heavy downpour. However, the second survey report failed to counter or address the detailed and comprehensive observations made in the first survey report dated 06.09.2016, nor did it offer any explanation or new material facts that would warrant a reversal of the initial conclusion.

This abrupt departure from the earlier findings, without explanation or justification, raises serious concerns about the reliability and objectivity of the second survey. In the absence of any substantive grounds to question the findings of the first survey, we find that the belated reassessment conducted

by the Respondent is deemed arbitrary and without due basis. In consequence thereof, we find no reason to accept the second survey report dated 18.10.2016 and the same is hereby set aside.

31. Accordingly, we set aside the contrary findings impugned before us and remand the matter back to the NCDRC for the limited purpose of determining the appropriate quantum of compensation payable to the Appellant in accordance with the policy terms and applicable law.

32. The civil appeal is accordingly disposed of.

33. Pending application(s), if any, shall stand disposed of.

.....J. [B.V. Nagarathna]

.....J. [Satish Chandra Sharma]

New Delhi

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