STATE CONSUMER DISPUTES REDRESSAL COMMISSION

WEST BENGAL

CONSUMER COMPLAINT NO. SC/19/CC/814/2018

POONAWALLA FINCORP LIMITED .....Complainant(s)
PRESENT ADDRESS - office at 24, Park Street, P.S. - Shakespeare Sarani, Kolkata - 700 016.,WEST BENGAL.

Versus

The Oriental Insurance Co. Ltd. & Others .....Opposite Party(s)
PRESENT ADDRESS - Regd. office at Oriental House, P.B. no. 7037, A-25/27, Asaf Ali Road, New Delhi - 110 007.,WEST BENGAL.
The Oriental Insurance Co. Ltd.
PRESENT ADDRESS - Br. office at 4 Lyons Range, 2nd Floor, P.S. - Hare Street, Kolkata - 700 001.,WEST BENGAL.
Magma Housing Finance Ltd.
PRESENT ADDRESS - 24, Park Street, P.S. - Shakespeare Sarani, Kolkata - 700 016.,WEST BENGAL.
Magma HDI General Insurance Co. Ltd.
PRESENT ADDRESS - 24, Park Street, P.S. - Shakespeare Sarani, Kolkata - 700 016.,WEST BENGAL.
MF Process & Solutions Pvt. Ltd.
PRESENT ADDRESS - 24, Park Street, P.S. - Shakespeare Sarani, Kolkata - 700 016.,WEST BENGAL.

BEFORE:

HON'BLE MR. RAJES GUHA RAY , JUDICIAL MEMBER

HON'BLE MR. SANTANU SAHA , MEMBER

FOR THE COMPLAINANT: POONAWALLA FINCORP LIMITED, Ms. Soni Ojha,Ms. Punam Choubhay,Ms. Dipanjana Paul (Advocate)

FOR THE OPPOSITE PARTY: The Oriental Insurance Co. Ltd. & Others, Mr. Debasish Bhandari. (Advocate)

DATED: 31/08/2026

ORDER

Hon'ble Mr. Santanu Saha, Member

GENESIS

1. The genesis of this complaint lies in an armed dacoity at the complainant's branch office on 1 June 2015 and in the subsequent repudiation of its claim under Money Insurance Policy No. 311500/48/2015/4528. The policy, issued by opposite party nos. 1 and 2 for the period from 11 July 2014 to 10 July 2015 against a premium of Rs.33,73,721/-, provided, inter alia, cover stated to be Rs.3,000 crore for cash in transit and Rs.80 crore for cash in safe. According to the complainant, five or six armed miscreants entered the branch at about 1.20 p.m. and took away Rs.48.26 lakh which had been collected through its field operations and was being processed for remittance to the bank. The insurer repudiated the claim on 17 July 2017. The complainant consequently seeks reimbursement of Rs.48.26 lakh with interest at 12 per cent per annum from the date of repudiation, Rs.10 lakh as compensation for deficiency in service and unfair trade practice, and Rs.5 lakh as litigation costs.

PROCEEDINGS BBEFORE THIS COMMISSION

2. The complaint was instituted before this Commission on 15 November 2018. By an order dated 7 December 2018 it was dismissed as not maintainable on the view then taken that the value of the insured service exceeded the pecuniary jurisdiction of the State Commission. In First Appeal No. 29 of 2019, the National Consumer Disputes Redressal Commission, by order dated 17 February 2020, set aside that order and remitted the complaint for adjudication on merits. That remand governs the further proceedings before us.

3. Upon remand, opposite party nos. 1 and 2 applied in IA/76/2022 for acceptance of their written version beyond the ordinarily prescribed period, relying upon the orders of the Supreme Court in Miscellaneous Application No. 21 of 2022 in Suo Motu Writ Petition (Civil) No. 3 of 2020 concerning extension of limitation during the pandemic. The application was allowed on 9 February 2022. The complainant's IA/109/2022, seeking substitution of its changed corporate name from Magma Fincorp Limited to Poonawalla Fincorp Limited, was allowed on 28 February 2022. By order dated 4 August 2022, the proceeding was directed to continue ex parte against opposite party nos. 3 and 4, who are pro forma parties.

4. The affidavit evidence for the complainant had originally been affirmed on 13 June 2022 by Mr. Sohail Alam, its then authorised signatory. After he demitted office, the complainant filed IA/243/2023 seeking leave for its present authorised signatory, Mr. Sabyasachi Sinha, to adopt that evidence. The application was allowed on 6 April 2023. The matter was ultimately heard on 29 July 2026. We have heard learned counsel appearing for the complainant and for opposite party nos. 1 and 2 and have considered the complaint, the written version, the affidavits of evidence, the questionnaires and answers, the survey report, the subsequent clarification furnished by the surveyor, the repudiation correspondence, the written notes of argument and the other documents on record. The delay in disposal is attributable to the disruption caused by the Covid-19 pandemic, changes in

the constitution of the Bench, adjournments sought by the parties and the docket of the Commission.

FACTS IN BRIEF

5. The material facts are substantially undisputed. The occurrence took place during the currency of the policy. An FIR under section 395 of the Indian Penal Code was lodged without delay and the insurer was also informed. A surveyor appointed by the insurer visited and inspected the place of occurrence. The police investigation resulted in G.R. Case No. 1252 of 2015 before the Court of the Chief Judicial Magistrate, Rohtas at Sasaram. Six persons were arrested; Rs.1.45 lakh and a pistol were recovered; and a charge-sheet dated 31 August 2018 was submitted under sections 395 and 412 of the Indian Penal Code. The criminal trial is stated to remain pending. These circumstances furnish independent corroboration of the insured event; the real controversy concerns compliance with the policy conditions and the amount proved as loss.

6. The surveyor initially reconciled the records and assessed the loss at Rs.44,53,950/-. The report recommended that the claim be considered after taking account of the police investigation, the final recovery and allied matters. The insurer thereafter sought clarifications by its communication dated 6 June 2016 regarding the date-wise cash position, the opening balance on 1 June 2015, amount handed over to CMS Information Systems Private Limited, cash remaining in the premises, collection up to the time of dacoity, the alleged back-dated entries, the complainant's accounting system, availability of an online verification mechanism and the source documents underlying the assessment. In a later communication dated 27 August 2016, the surveyor expressed the view that the loss was not admissible under the policy conditions and recommended repudiation.

7. Acting on that later opinion, opposite party nos. 1 and 2 repudiated the claim on 17 July 2017, invoking Special Condition No. 1, General Condition Nos. 3 and 4(c), and an exclusion described in the repudiation letter as Exclusion No. 11, though both sides have addressed it before us as Exclusion No. 10. The repudiation letter nevertheless afforded the complainant two weeks to substantiate its case. On 24 July 2017 the complainant requested a copy of the final survey report. Upon receiving the report and the surveyor's later communication, it sought time on 10 August 2017 and submitted a detailed response on 24 August 2017. It thereafter sent reminders dated 7 September 2017, 20 September 2017, 6 October 2017, 24 October 2017, 8 December 2017, 9 January 2018, 27 February 2018 and 28 March 2018. The claim was not reconsidered in the complainant's favour.

SUBMISSIONS OF THE COMPLAINANT

8. Learned counsel for the complainant submits that its collections were documented through machine-generated receipts which were synchronised with its central accounts in real time and could not be retrospectively fabricated. The field collections were physically brought to the branch, ordinarily in two tranches on the following day, for deposit in the bank. Since 31 May 2015 was the last day of the month and a half-holiday, it was a heavy collection day. The cash physically reaching the branch on 1 June 2015 was, in accordance with the complainant's stated internal practice, accounted for as collection of 31 May 2015. This, it is argued,

explains the entry in the daily cash register without casting doubt on the machine-generated receipt data or on the occurrence and quantum of the loss.

9. As to Special Condition No. 1, the complainant relies upon the cash book, customer receipts, cash-collection verification report, State Bank of India cash-flow statement, petty-cash summary, FIR and the cash-deposit slip dated 1 June 2015, all of which were made available to the surveyor. As to General Condition No. 3, it says that the branch had iron shutters and grills and sound construction; neither the policy nor any communicated warranty required a security guard or CCTV system; and a lone guard could not reasonably have been expected to overpower five or six armed offenders. It further says that the cash was not casually abandoned but was being processed at the counter for handover to the cash-management agency when the dacoity occurred. The prompt police action and arrests, according to the complainant, also answer the suggestion that it had no effective coordination with the police.

10. The complainant contends that General Condition No. 4(c) was duly met because all primary records and corroborative documents reasonably required to establish ownership and quantum were supplied. It characterises the reliance on Exclusion No. 10, concerning loss attributable to negligence or omission of the insured, as subjective and unsupported by any causal connection between the alleged omissions and an armed dacoity. It also criticises the insurer for not supplying the survey report until specifically asked and for failing to respond meaningfully to its detailed representation and repeated reminders. On that basis, it submits that the repudiation was arbitrary, amounted to deficiency in service and entitles it to the entire claim with the consequential reliefs prayed for.

SUBMISSIONS OF THE INSURER (OP Nos. 1 &2)

11. Learned counsel for opposite party nos. 1 and 2, on the other hand, submits that the complaint is not maintainable, is vexatious, and suffers from non-joinder and misjoinder. On merits, the insurer emphasises that a very large amount of cash was lying on an open counter and could be gathered by the offenders into an employee's bag. It relies on the absence of a guard, CCTV, a strong chest, readily available police emergency particulars and what it describes as adequate police coordination. These circumstances, according to the insurer, demonstrate a failure to take reasonable care within General Condition No. 3 and bring the loss within Exclusion No. 10.

12. The insurer further submits that the complainant's accounting practice was inconsistent with generally accepted accounting principles and with the complainant's own cash-safekeeping guidelines, particularly clause 2(h), which required the cash register to be updated and signed daily by the cashier. CMS personnel are said to have arrived at about 10.00 a.m. on 1 June 2015 and to have received only Rs.14,22,256/-, although the collection attributed to 31 May 2015 was approximately Rs.63 lakh. The insurer points to the complainant's admission that cash physically received on 1 June was entered in the daily register under 31 May. It also relies upon a discrepancy of Rs.3,72,050/- between the cash book and the online cash-collection report, which the surveyor could not reconcile and which led to the assessed figure of Rs. 44,53,950/- rather than the claimed Rs.48.26 lakh.

13. The insurer maintains that it acted promptly by appointing a surveyor, examining the report and seeking detailed clarification. It says that the later recommendation of repudiation followed the surveyor's examination of the accounting and security lapses and was not procured at the insurer's behest. It also submits that only Rs.1.45 lakh was recovered by the police and that any indemnity must account for recovery so that the insured does not receive more than its actual net loss. It denies liability for interest, compensation and costs.

14. In support of its approach to the policy conditions, the insurer has relied upon Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd., (2010) 10 SCC 567, for the proposition that an insurance contract must be construed according to its expressed terms and that a court or consumer forum cannot add, delete or substitute words on equitable considerations. It has also cited Commissioner of Customs, Kandla v. Essar Oil Ltd., (2004) 11 SCC 364, apparently to contend that a party should not obtain an advantage through fraud or misrepresentation and must exercise due diligence.

POINTS FOR CONSIDERATION

15. From the pleadings and evidence, the questions which arise for determination are whether the complaint is maintainable against opposite party nos. 1 and 2; whether the repudiation dated 17 July 2017 is sustainable under Special Condition No. 1, General Condition Nos. 3 and 4(c) and Exclusion No. 10; if the repudiation is not sustainable, what amount of loss has been proved and how the police recovery is to be treated; and what consequential relief, including interest, compensation and costs, should follow. These questions are considered in that order.

DECISION WITH REASONS

16. The objection to maintainability is without substance. The earlier question of pecuniary jurisdiction stood concluded by the remand order of the National Commission. The complaint concerns an insurance service obtained to indemnify an existing business asset against accidental loss, not a service obtained for resale or as a profit-generating instrument in itself. The principle explained by the Supreme Court in National Insurance Co. Ltd. v. Harsolia Motors, (2023) 8 SCC 362, therefore supports the complainant's status as a consumer under the Consumer Protection Act, 1986. The insurer has also not identified any particular person whose absence prevents an effective adjudication between the insured and the insurer. Opposite party nos. 3 and 4 are pro forma parties and no substantive relief is required against them. The general pleas of non-joinder and misjoinder are accordingly rejected.

17. We next examine the insured event and the policy conditions. The armed dacoity, the immediate FIR, the insurer's appointment of a surveyor, the arrests, the police recovery and the charge-sheet are not displaced by any contrary evidence. The surveyor himself quantified a reconciled loss. The occurrence and the fact that cash belonging to the complainant was taken from the insured branch during the policy period are therefore proved on the standard of preponderance of probabilities applicable to these proceedings.

18. We respectfully adopt the principle in Suraj Mal Ram Niwas Oil Mills that the policy must be construed as written. That principle, however, operates in both directions. It prevents the insured from enlarging the cover, but equally prevents the insurer from converting general words requiring reasonable care into unexpressed warranties that a guard, CCTV camera, alarm system or a particular kind of strong room must be maintained at all times. No clause produced before us is shown to prescribe any of those safeguards as a condition precedent to liability. Their absence may be considered as part of the factual setting, but it cannot by itself create a contractual exclusion which the parties did not write.

19. Special Condition No. 1 required regular books or records of cash and their safekeeping. The record does disclose an unsatisfactory practice: cash physically received on 1 June 2015 was entered in the daily cash register under 31 May 2015. Such a practice ought not to be approved and the complainant would be well advised to align its physical cash register with the actual date and time of receipt. Yet the consequence of that irregularity must be assessed by reference to the policy and the evidence. The insurer's own surveyor verified the machine-generated receipts, the online cash-collection report and the supporting records, found that a double-check and reconciliation system existed, and was able to quantify Rs.44,53,950/-. The irregular dating thus justifies rejection of the unreconciled component; it does not justify treating the entire documented loss as fictitious or outside the cover.

20. General Condition No. 4(c) likewise does not support total repudiation. The complainant supplied the FIR, daily cash book, customer receipts, online verification material, SBI cash-flow statement, petty-cash summary and the cash-deposit slip. The insurer has not identified any further primary document, within the complainant's possession, the absence of which makes the reconciled sum incapable of proof. The surveyor's ability to reach a precise figure after scrutiny is itself compelling evidence that the obligation to substantiate the claim was met to that extent. The unverified sum of Rs.3,72,050/- stands on a different footing and cannot be awarded merely because it formed part of the original claim.

21. The reliance on General Condition No. 3 and Exclusion No. 10 also fails as a ground for total repudiation. The insured’s obligation to take reasonable care must be assessed in the light of the surrounding circumstances and cannot, in the absence of an express policy condition, be enlarged into a mandatory requirement to install CCTV cameras, engage security guards, or adopt any other particular security measure. The branch had shutters and grills. The cash was at the counter during business hours because it was being reconciled and prepared for banking through CMS. There is no evidence that it was left unattended for an extended period or exposed outside the ordinary process of collection and remittance. More importantly, the proximate cause of the loss was the intervention of five or six armed offenders. On the evidence available, it would be speculative to hold that a guard or CCTV camera would probably have prevented that dacoity or reduced the amount taken. An exclusion framed in terms of negligence or omission cannot be applied merely by listing precautions that, with hindsight, might have been desirable, the insurer must establish conduct falling within the clause and a real nexus with the loss. That burden has not been discharged.

22. Commissioner of Customs, Kandla v. Essar Oil Ltd. does not carry the insurer's case further. It arose from customs proceedings and dealt with fraud and misrepresentation in a materially different statutory setting. No specific plea of fabricated receipts, collusive dacoity or fraudulent insurance claim has been proved here. The accounting-date irregularity was disclosed, examined and partially corrected by the surveyor's reconciliation. In the absence of proof of deceit, a general proposition that fraud vitiates a transaction cannot be used to transform deficient bookkeeping into fraud or to avoid an otherwise covered loss. The cited decision is therefore inapplicable to the facts before us.

23. The surveyor's first assessment and later opinion must be read in their proper spheres. Quantification of the physical loss at Rs.44,53,950/- was based upon reconciliation of the cash book, the computer-generated collection report and supporting documents. The later recommendation of repudiation involved an interpretation of the policy conditions. While the factual investigation of a licensed surveyor is relevant and carries weight, the legal effect of policy terms is ultimately for the adjudicating forum. The subsequent letter of the surveyor does not explain how an express condition made a guard, CCTV or constant storage in a chest mandatory while cash was actively being processed, nor does it dislodge the earlier reconciliation. Opposite party nos. 1 and 2 were therefore not justified in treating the later opinion as sufficient to repudiate the entire claim.

24. On quantum, the complainant has proved Rs.44,53,950/- and no more. The difference of Rs.3,72,050/- remained unreconciled and the claim for that component must fail. As Rs.1.45 lakh was recovered by the police, the principle of indemnity requires an adjustment only if, and to the extent that, the recovered money has actually been released or restored to the complainant. The present record states the fact of police recovery but does not establish that the complainant received that money. It would be unjust to deduct a sum still lying in judicial or police custody, and equally unjust to permit double recovery if it has been returned. The insurer shall therefore be entitled to deduct from Rs.44,53,950/- any part of the Rs.1.45 lakh which it proves, by release order, receipt or equivalent documentary material, to be actually restored to the complainant before payment under this order.

25. The repudiation of the entire claim, despite a reconciled assessment and without establishing an operative exclusion, constitutes deficiency in service. The insurer did grant an opportunity to the complainant after its initial decision, but the detailed response and repeated reminders did not result in a reasoned reconsideration. Interest is therefore warranted to compensate the complainant for being kept out of the indemnity from the date of repudiation. Having regard to the commercial nature of the amount, the period involved and the need to avoid a punitive award, interest at 9 per cent per annum is fair. Since that interest compensates the loss of use of money, a separate award of Rs.10 lakh under the label of compensation would result in duplication and is declined. The materials also do not establish the elements of an unfair trade practice distinct from deficiency in service. The complainant is, however, entitled to reasonable litigation costs.

26. For the reasons stated above, the first point is answered in favour of maintainability. The second is answered by holding that the insurer failed to prove a breach or exclusion warranting total repudiation. The third is answered by accepting the surveyor's reconciled quantum of

Rs.44,53,950/-, subject to adjustment only of police-recovered money actually restored to the complainant. The final point is answered by awarding interest at 9 per cent per annum and costs, while declining the balance monetary claims. No relief is called for against opposite party nos. 3 and 4.

ORDER

Accordingly, the consumer complaint is allowed in part on contest against opposite party nos. 1 and 2 and dismissed against opposite party nos. 3 and 4, without any order as to costs against the latter. The following directions shall govern compliance:

(i) Opposite party nos. 1 and 2 shall, jointly and severally, pay to the complainant Rs.44,53,950/- (Rupees forty-four lakh fifty-three thousand nine hundred and fifty only), subject to deduction of any amount out of the police recovery of Rs.1.45 lakh which is shown by reliable documentary proof to have actually been released or restored to the complainant before such payment.

(ii) The amount payable under clause (i), after any permissible adjustment, shall carry simple interest at 9 per cent per annum from 17 July 2017 until the date of actual payment.

(iii) Opposite party nos. 1 and 2 shall further pay Rs.1,00,000/- (Rupees one lakh only) to the complainant as costs of the proceedings.

(iv) The above sums shall be paid within forty-five days from the date of this Order

Let a copy of this order be supplied to the parties free of cost in accordance with the applicable rules. Pending interlocutory application, if any, stands disposed of.

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RAJES GUHA RAY

JUDICIAL MEMBER

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SANTANU SAHA

MEMBER