HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

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FAO(D) No. 13/2024

Reserved on: 25.11.2025
Pronounced on: 04.12.2025
Uploaded On 04.12.2025
Whether the operative part or full judgment is pronounced: 'FULL'

NATIONAL INSURANCE COMPANY LIMITED

……...Petitioner(s)

Through:
Mr. N. A Dandru, Advocate

Versus

MALA BASHIR AND OTHERS

……Respondent(s)

Through:
Mr. Irfan Rasool, Advocate.

***CORAM*:**
HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Per Sanjay Parihar-J

1. This appeal challenges the order dated 11.10.2024 passed by the Jammu & Kashmir Consumer Redressal Commission, Srinagar ("the Commission"), whereby the complaint filed by the respondent was allowed and the appellants were directed to pay an amount of Rs. 4,76,347/- as compensation for the damage caused to the respondent's residential house during the floods of September 2014.

2. The relevant facts are not in dispute. The respondents are the legal heirs of late Shad Mohd Bashir, who had insured his residential house situated at Sarai Payen, Amira Kadal, Srinagar, with the appellants since 2009. The policy was renewed annually, covering the risks enumerated therein. The last policy period was from 29.12.2013 to 28.12.2014. During this subsisting policy period, the insured house suffered substantial damage due to the September 2014 floods. The respondents, as legal heirs, sought

indemnification of the loss. The appellants registered the claim and appointed a surveyor, M. Kumar Surveyors Pvt. Ltd., who assessed the loss at Rs. 6,08,462/-. The appellants, however, repudiated the claim on the ground that the policy was a Standard Fire Policy, which excluded STFI (Storm, Tempest, Flood and Inundation) perils.

3. While deciding the complaint, the Commission noted the appellants' plea that the policy had been renewed uninterruptedly since inception, that STFI perils had been excluded in all earlier years, and that the insured was fully aware of this exclusion. On this basis, the appellants argued that the respondents could not plead ignorance regarding the exclusion. The Commission rejected this contention, holding that a lay consumer cannot reasonably be expected to:

> (i) calculate premium variations arising from the inclusion or exclusion of specific risks;
> (ii) discern whether any discount was granted for excluding a particular peril or whether an additional premium was charged for any add-on cover; or
> (iii) understand the technical expression **"STFI"** or its scope without explicit disclosure by the insurer.

4. Upon consideration of the survey report and the submissions of both parties, the Commission held that although the policy contained an endorsement excluding STFI perils, the respondents were not entirely free from negligence. Holding them contributorily negligent, the Commission reduced the assessed loss by **25%**, and directed the appellants to pay Rs. 4,56,347/-**,** along with Rs. 20,000/- as litigation compensation (total Rs. 4,76,347/-), within 30 days; failing such payment, the amount was to carry interest @ 6% per annum**.**

5. The appellants have assailed the impugned order primarily on the ground that it is legally unsustainable. It is contended that since the policy was a renewal of the earlier policy, it amounted to a continuation and repetition of the original contract, thereby reviving all prior terms and conditions, including the exclusion of STFI perils. It is further submitted that the

respondents never objected to such exclusion at any stage. According to the appellants, once the exclusion existed in successive policies, the Commission erred in presuming that the insured was granted any rebate by excluding STFI risks.

The appellants further argue that, in the absence of payment of the additional premium, as mandated under Section 64VB of the Insurance Act, the insurer never assumed the risk of indemnifying the STFI-related loss. During the proceedings, the respondents demanded production of the original proposal form; however, the appellants expressed their inability to produce it, stating that it had been destroyed over time. The appellants contend that, given the explicit exclusion of flood-related damage, the loss was not indemnifiable and repudiation of the claim was lawful. It is additionally urged that the complaint did not even seek to set aside the repudiation letter dated 15.11.2014, thereby implying that the respondents had accepted the validity of repudiation; hence, the complaint was liable to be dismissed.

6. Learned counsel for the appellants, relying upon the decision in case titled ***"Shree Ambica Medical Stores and Others vs. Surat Peoples Co-operative Bank Limited and Others reported as (2020) 13 SCC 564",*** argued that the contract of insurance is binding between the parties, and once the policy expressly excludes STFI perils, the insurer cannot be saddled with liability. To hold otherwise would amount to rewriting the contract and creating obligations that the parties never agreed upon. It is contended that the insured cannot claim anything beyond the express terms of the policy, and since the policy was consistently renewed from 2009 with the same exclusion, the respondents cannot now claim ignorance of the exclusion clause.

7. Per contra**,** learned counsel for the respondents submitted that Policy No. 421001/11/09/3100000760**,** along with its subsequent renewals bearing Nos. 421001/11/10/3100000681**,** 421001/11/11/3100000697**,** 421001/11/12/3100000861**,** and 421001/11/13/3100000901, unequivocally described themselves as Standard Fire and Special Perils Policies**.** It was

contended that such policies extend coverage not only to loss or damage caused by fire or earthquake, but also to a broad spectrum of specified perils, including both natural and manmade disasters. Being comprehensive in nature, these policies are designed to protect against sudden and accidental loss; therefore, exclusion of natural calamities such as flood and inundation cannot be readily presumed or inferred without clear, explicit, and informed consent of the insured.

8. Reliance was placed a case titled ***"Manmohan Nanda Vs. United India Assurance Company Ltd. and Anr. reported as (2022) 4 SCC 582"***, wherein it was held that the insurer carries a corresponding duty to inform the insured of the terms and conditions of the policy proposed to be issued, the contract being founded upon the principle *uberrimafides* (utmost good faith). Further reliance was placed on a case titled ***"M/s. Texco Marketing Pvt. Ltd. v. TATA AIG General Insurance Company Ltd reported as 2022 LiveLaw (SC) 937",*** to submit that an insurer seeking to invoke an exclusion clause must demonstrate that such exclusion was specifically brought to the knowledge of, and understood by, the insured.

   It was additionally argued that under the IRDA (Protection of Policyholders' Interests) Regulations, 2002**,** both the insurer and its agents are obliged to provide all material information necessary for the insured to make an informed choice. In the present case, the appellants failed to discharge this statutory and fiduciary obligation. Accordingly, the respondents contended that the Commission's reasoning is sound, just, and does not warrant interference in the appeal.

9. We have examined the record and heard learned counsel for both sides. It is undisputed that the respondents suffered loss due to the floods of 2014 and that the survey report assessing the loss remains unchallenged by either party. It is also admitted that the residential house of the insured stood covered under an insurance policy from 2009 onwards with yearly renewals up to 28.12.2014, and that the loss occurred during the pendency of the last renewal. There is no further dispute that although the policy is described as

a *Standard Fire and Special Perils Policy*, it contains an endorsement excluding STFI (Storm, Tempest, Flood and Inundation) perils.

10. The Commission had directed the appellants to produce the proposal form to ascertain whether the insured had expressly consented to the exclusion. The appellants failed to produce the original proposal form, asserting that it had been destroyed. The Commission accordingly drew an adverse inference, particularly since the complaint had been filed in September 2015 relating to a policy for 2013–2014, and no evidence, such as examination of the agent (Code-85), was led by the appellants to establish that the exclusion clause had been specifically notified.

It is therefore evident that no evidence was produced by the appellants to prove that the exclusion of STFI coverage had ever been brought to the knowledge of the insured. Their entire case is premised solely on the assertion that renewal of the policy implies knowledge of exclusion.

11. 11. Before considering the rival contentions further, it is necessary to reiterate the principles governing the interpretation of insurance contracts. Such contracts are standard-form, drafted unilaterally by the insurer, leaving the consumer with no bargaining power and only a "take it or leave it" choice. Courts have consistently treated such contracts as contracts of adhesion, inherently tilted in favour of insurers.

It is also not in dispute that a Standard Fire and Special Perils Policy ordinarily cover a wide range of risks, including storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation, as is evident from Clause VI of the appellants' own policy document.

12. In ***"Shree Ambica Medical Stores and Others vs. Surat Peoples Co-operative Bank Limited and Others reported as (2020) 13 SCC 564"***, the Supreme Court dealt with a situation where the insured had paid an extra premium for STFI coverage, which was subsequently refunded. It was in this factual backdrop that the Court held that renewal revived the earlier terms and that the insured, knowing the refund and exclusion, could not

claim STFI coverage. The ratio of that judgment turned upon the insured's explicit knowledge of the exclusion and is distinguishable on the facts.

13. In *"**Manmohan Nanda v. United Insurance reported as (2022) 4 SCC 582"***, dealing with the issue of pre-existing disease, the Supreme Court held that just as the insured owes a duty to disclose material facts, the insurer also owes a reciprocal duty to disclose the terms and conditions of the policy to be issued. Paragraphs 35 and 36 of the decision emphasise that the contract of insurance is founded on utmost good faith and that the insurer must clearly inform the insured of material terms.

14. Similarly, in ***"M/s. Texco Marketing Pvt. Ltd. v. TATA AIG General Insurance Company Ltd reported as 2022 LiveLaw (SC) 937"***, the Supreme Court restored the decision of the State Commission holding that an exclusion clause which undermines the basic coverage of the contract cannot be enforced unless it is proved that the clause was adequately disclosed. The Court held that unilateral inclusion of an unfair exclusion clause, combined with non-compliance with the IRDA Regulations and suppression of material terms, amounts to unfair trade practice.

15. These authorities together lay down that insurance contracts are governed by the principle of full disclosure. While the insured must disclose material facts relating to the risk, the insurer bears an equally onerous duty to clearly notify and explain any exclusion clause.

16. This requirement has been given statutory recognition in the **IRDA (Protection of Policyholders' Interests) Regulations, 2002**, which mandate that where a proposal form is not filled by the insured, a certificate must be incorporated certifying that its contents were fully explained. Clause IV further requires the insurer to furnish a copy of the proposal form to the insured within thirty days of acceptance.

17. In light of the statutory mandate, the onus was upon the appellants to prove that the exclusion of STFI coverage was duly explained to the insured and that he was fully aware of its implications. Given that the policy is titled as a *Standard Fire and Special Perils Policy*, a nomenclature which ordinarily

conveys coverage of natural calamities, a consumer would legitimately infer that the policy covers all specified perils, including those now sought to be excluded. In the absence of the proposal form and any corroborative evidence, the appellants cannot assert that they discharged their burden of proving exclusion.

18. Learned counsel for the appellants urged that the policy itself reflects non-payment of premium towards STFI coverage, and therefore, it must be presumed that the insured was aware of the exclusion. We find this contention untenable. In view of **Texaco Marketing (supra)**, exclusions that defeat the basic coverage of a policy may be severed, by application of the blue-pencil doctrine, where they are neither disclosed nor explained.

19. Having regard to the objectives of the Consumer Protection Act, once it is shown that the contract contains a clause which, if enforced, would allow the insurer to escape liability while benefiting from the consumer's payment of premium, such a clause must be struck down as unfair. A clause that negates the essential purpose of the contract is void and cannot be enforced.

20. Consequently, the appellants cannot draw support from the argument that no premium was paid for STFI coverage. When the policy is comprehensive and styled as covering special perils, the insurer cannot rely upon a concealed exclusion clause to defeat the consumer's legitimate expectations.

21. Much was argued regarding the fact that the policy had been renewed from time to time, implying knowledge on the part of the insured. Reliance was placed on "***Shree Ambica Medical Stores and Others vs. Surat Peoples Co-operative Bank Limited and Others"***. That case is distinguishable, as the premium for STFI coverage had been returned to the consumer, clearly establishing knowledge of exclusion. No such circumstance exists here.

22. In the present case, where the policy describes itself as a comprehensive Standard Fire and Special Perils Policy and where even the acronym "STFI" was not spelt out, the insured cannot be presumed to have understood the exclusion. The proposal form having not been produced, the

Commission's findings cannot be termed perverse. On the contrary, the Commission's application of 25% contributory negligence based on the surveyor's report remains unchallenged by the respondents. We find no infirmity in the reasoning.

23. In view of the foregoing, we hold that the findings of the Commission suffer from no illegality. The appellants have failed to prove that the exclusion of STFI perils was ever fairly disclosed to the insured.

24. The appeal is therefore without merit and is dismissed. The appellants shall satisfy the award. The statutory deposit shall be transmitted to the Commission, which shall release the amount to the respondents. The remaining awarded amount shall be paid in terms of the Commission's directions, along with the interest specified therein.

(SANJAY PARIHAR) **(SANJEEV KUMAR)**
JUDGE **JUDGE**

Srinagar
04.12.2025
"Shaista-PS

Whether the Judgment is reportable: Yes.
Whether the Judgment is speaking: Yes