

(2003) 08 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

ABDUL AZIZ BHAT

APPELLANT

Vs

ORIENTAL INSURANCE COMPANY

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Citation : 2004 4 CPJ 674 : 2005 1 CPR 607

Hon'ble Judges : M.Y.KAWOOSA , JAMEELA BASHIR J.

Judgement

1. THIS complaint has a chequered carrier. It was presented before the Commission on 17.12.1997. Complainant alleged that he insured his residential house with O.P. under policy No. 23424/11/95/0001 for the sum of Rs. 8.00 lacs for the period of 1 year commencing from 3.4.1995 to 2.4.1996. According to complainant on the intervening night of 23rd/24th April, 1995 the said house was gutted in fire and total damage was caused. FIR was lodged and claim was raised. It is further averred that M.K. Wali, Surveyor was appointed to assess the loss who assessed the loss at Rs. 5,25,574.00 but the claim was not paid. O.P. was summoned. O.P. refuted the claim by saying that the claim is fictitious. Property of the father -in -law of complainant in the same village was gutted in fire which was not insured. However, complainant examined two witnesses namely Manzoor Ahmed and Mohammad Shaban. No witness was examined by the O.P. Claim was allowed by this Commission which was assailed by the O.P. before the Honble High Court. Division Bench of the High Court remanded the case back to this Commission with the direction to allow the O.P. to file detailed written version and to allow both parties to adduce evidence both oral and documentary. It was so remanded because the O.P. raised so many pleas before the High Court stating therein that the house gutted in fire was not insured it belonged to in -laws of the complainant. O.P. raised a plea that they got the case investigated by G.R. Bhat, Scientific Investigator who opined the claim to be FICTITIOUS.

2. AFTER remand of the case, detailed written version was filed by the O.P. and opportunity was given to the complainant to adduce additional evidence but

complainant desired not to produce any evidence so complainant has added nothing to the evidence earlier examined. However, O.P. has examined G.R. Bhat, Scientific Investigator. They have placed on record the final investigation report signed by SSP Kupwara. They have produced the claim file and the investigation report which includes Investigation Reports of Shakeel Ahmed Bhat and Mr. Watali. Heard learned Counsels for the parties and we have perused the record. Learned Counsel for the O.P. has taken us through the investigation report of G.R. Bhat, Scientific Investigator who made detailed inquiry in presence of the complainant and G.R. Bhat has come to the conclusion that the house which was burnt belonged to in -laws of the complainant and was not insured. Complainant was residing in his own house which is in the same village and which was in tact on the date of occurrence. G.R. Bhat has recorded the statement of 5 witnesses including the Nambardar and the complainant also. All the 4 witnesses including the Nambardar have with one voice supported the version of O.P. that the house which was burnt belonged to in -laws of complainant and the house which the complainant owned was not damaged in fire but is intact. He has recorded the statement of complainant also but the complainant has supported his own version that the house was given to him by in -laws which was insured and which gutted in fire. Learned Counsel for complainant wants us to give much more importance to the statement of complainant recorded by the Investigator because it is signed in presence of brother -in -law of the complainant. Learned Counsel for the complainant has vehemently argued that if the house did not belong to the complainant it belonged to in -laws of the complainant how could complainant depose in presence of his brother -in -law that house belonged to him. According to the learned Counsel for the complainant, complainant could not claim a house to be his own in presence of his real owner brother -in -law. This query can simply be replied by us that the house which was gutted which belonged to the brother -in -law of the complainant was not insured brother -in -law would not have any objection in case his relative could get huge amount by way of fictitious claim. However, the statement of G.R. Bhat is not supported by 5 witnesses including Nambardar of the Illaqa only but it is supported by SSP Kupwara who has sent the final report which is on the file. In his final report he has categorically stated that the claim of complainant is fictitious. The house which was burnt belonged to in -laws of complainant and not to the complainant himself. This report is dated 4.8.2000 signed by S.P., Kupwara. 3rdly the contention of O.P. is supported by Mr. Watali, retired DIG who is the Investigator and Shakeel Ahmed Bhat, both have supported that the claim is fictitious and have desposed that the house gutted in fire belonged to in -laws of the complainant. Against this whole evidence we have seen the statement of two witnesses of the complainant. Honble High Court has set aside the earlier order and was not satisfied with the evidence of the complainant. We have again examined the statements of two witnesses of complainant Manzoor Ahmed Bhat and Mohammad Shaban Bhat. Both the witnesses have not uttered word that the house belonged to the complainant. Both the witnesses have deposed that they know the complainant

as they belonged to the same village. Fire broke out on 23.4.1995 and witness was also there at the time of incident. Regarding the house which gutted in fire they are silent. They have not supported the statement of the complainant that the house of complainant burnt in the fire. For these reasons, therefore, we are not convinced by the arguments of the learned Counsel for the complainant. Complaint is dismissed with costs of Rs. 3,000/ - to be paid to the Insurance Company.

Complaint dismissed.