(2001) 10 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

AMRENDRA KUMAR VERMA APPELLANT

Vs

BRANCH MANAGER, NEW INDIA ASSURANCE COMPANY LTD. RESPONDENT

Date of Decision : 01-10-2001

Acts Referred:

Citation : 2002 1 CPJ 234

Hon'ble Judges : A.N.Chaturvedi , C.R.Venkataraman J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal by the complainant is directed against an order dated 8.11.1996 passed by District Forum, Samastipur, in Complaint Case No. 68 of 1995 whereby the complaint of the complainant was dismissed.

2. IT appears that the complainant-appellant filed a complaint before the District Forum on 10.10.1995 (?) alleging therein that his shop known as M/s. Verma General Stores was under insurance cover provided by New India Assurance Company Ltd., Samastipur Branch, vide insurance policy dated 21.5.1990. The insured amount was Rs. 50,000/-. In between the night of 16.2.1991 and 17.2.1991 theft was committed in his aforesaid shop and the thieves took away articles worth Rs. 60,230/- including Stock Register, Sale Register, Purchase Register etc. kept in the shop. F.I.R. was lodged at Samastipur Town Police Station and on the basis thereof the police registered Samastipur Town P.S. Case No. 58 dated 20.2.1991 and after investigation submitted charge-sheet on 2.10.1991. On 15.11.1991 he preferred his claim before the Insurance Company and the Insurance Company appointed Surveyor Sri A.P. Mandal to investigate the claim. The said Surveyor asked for copy of F.I.R., the receipts and registers concerning purchase of articles etc. Since the thieves had taken away the Stock Register, Sale Register, Purchase Register and other papers kept in the shop, he, on the basis of his memory, simply made over a statement to the Surveyor on 4.5.1992. On 22.10.1992 the Divisional Office of the Insurance Company also asked for submission of papers within fifteen days under the threat of closing the file and in fact closed the file due to non-submission of papers and intimated him

about the same under registered letter dated 4.2.1993. The file was again opened when he filed a petition in the Regional Office of the Insurance Company but the same was again closed and he was informed about this under letter dated 29.5.1995. On the allegations aforesaid the complainant in his complaint had claimed Rs. 60,230/- as the value of stolen articles, Rs. 20,000/- for mental agony and Rs. 10,500/- as cost. In all he had claimed Rs. 90,730/-. The opposite parties filed written statement and contested the case before the District Forum. While admitting the fact that the shop of the complainant was under insurance cover provided by the Insurance Company, they did not admit the factum of alleged theft in the shop and the allegation that the thieves had taken away the Stock Register, Sale Register, Purchase Register and other papers. Their case is that inspite of request of the Surveyor and the Insurance Company the complainant did not submit the required papers rather submitted simply his statement (declaration) and under the circumstances the claim file was closed.

Further case of the opposite parties was that the complainant in the claim form had mentioned that his shop remained uninhabited since December, 1990. In his statement before the police the complainant had alleged that the landlord committed theft in the shop and allowed a tailor shop therein. As per the statement of the landlord before the Surveyor, the shop usually remained closed and by January, 1988 the complainant had gradually removed all the articles from the shop in his (landlord''s) absence. In order to have wrongful gain from the Insurance Company, the complainant in collusion with the local police manufactured a case of theft. The Surveyor deputed for investigation had found that it is not a case of theft and it should not come under the categories of risks covered by insurance policy. On the aforesaid pleas, the opposite parties (respondents) in their written statement had prayed for dismissal of the complaint.

3. THE complainant neither filed any affidavit nor examined any witness in support of his case. He had brought on record of the District Forum photo copies of certain documents (miscellaneous accident insurance policy, charge-sheet, statement dated 4.5.1992 of the complainant, correspondence with Surveyor and the Insurance Company) but no affidavit to the effect that the photo copies of the documents were true photo copies of their respective originals was filed by the complainant. Similarly the opposite parties neither filed any affidavit in support of the statements made in their written statement nor with regard to photo copies of documents (burglary claim form, Surveyor''s report, F.I.R., statement of landlord Ram Dayal Mahto, statement of complainant, petition of complainant, correspondence letter) filed by them. THE District Forum considered the admitted facts as well as materials on record and found that there was no deficiency in service on the part of the Insurance Company and dismissed the complaint with observation that the matter should be agitated before a Civil Court where the parties will have ample opportunity to adduce oral as well as documentary evidence and will have a full length trial of the matter. Now it has to be considered if the impugned order calls for any interference by this

Commission or not. It is not disputed that the shop of the complainant was under insurance cover provided by the Insurance Company and the insurance was subsisting at the time of the alleged theft. It is also not disputed that the complainant had lodged F.I.R. before the police with regard to the alleged theft and the police after investigation had submitted charge-sheet against the accused. It is also not disputed that on claim being preferred by the complainant, the Insurance Company had appointed Surveyor to investigate the claim. It is also not disputed that on being asked by the Surveyor and the Insurance Company to produce Stock Register, Sale Register, Purchase Register and papers showing the stock position at the time of alleged theft, the complainant simply produced his own declaration (statement) dated 4.5.1992 which was based on his memory. He did not produce the said registers and papers which could have shown the stock position, on the ground that the same were in the shop and were taken away by the thieves. It may be pointed out that the complainant in his F.I.R. before the police had not alleged that the said Registers had been stolen away by the thieves. He for the first time stated about theft of the said registers in his declaration dated 4.5.1992, when he was asked to produce the said registers. For assessment of loss it was incumbent on the complainant-appellant to produce papers showing the stock position and thereby assist the Insurance Company in assessing the loss but he failed to do so inspite of repeated demand. On the overleaf of the claim form submitted by the complainant, details of purchases made by him from different firms on different occasions are given. Had the complainant liked, he could have easily procured duplicate copies of papers concerning purchases made by him from the firms concerned and filed the same before the Surveyor/Insurance Company for settlement of his claim but he did not do so. In the charge-sheet submitted by the police it has been stated that the police did not find any concrete proof of removal of articles from the complainant''s shop. The report of the Surveyor shows that the complainant did not submit any paper. Under the circumstances if the Insurance Company closed his claim file, the same cannot be said to be unjustified. That being so, the finding of the District Forum that there was no deficiency in service on the part of the Insurance Company has to be upheld. Accordingly it is held that the impugned order does not call for any interference by this Commission.

4. IT was contended on behalf of the appellant that the Insurance Company repudiated his claim after inordinate delay which amounted to deficiency in service. In this connection it was pointed out on behalf of the Insurance Company that the complainant admittedly preferred his claim on 15.11.1991 and the Insurance Company appointed a Surveyor to investigate the claim of the complainant. IT was further pointed out that the Surveyor admittedly asked the complainant to submit papers/registers showing his stock but he instead of producing the same filed his own declaration on 4.5.1992 and even when the Surveyor and the Insurance Company reminded him to produce the papers, he failed to do so and under the circumstances his claim file was closed and

intimation was sent to him which he admittedly received on 4.2.1993. IT was contended that under the circumstances the delay, if any, in settlement or repudiation of claim was due to non-production of papers by the complainant inspite of reminders. There is much substance in this contention of the learned Counsel for the opposite parties-respondents. That being so, there is no merit in the above contention of the appellant. In the result, this appeal is hereby dismissed. There is no order as to cost. Appeal dismissed.

