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(2010) 01 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

Amrit Sagar Oils Mills Pvt Ltd — APPELLANT

Vs

National Insurance Company Ltd — RESPONDENT

Date of Decision : 21-01-2010

Acts Referred:

Citation : 2010 1 CPJ 292

Hon'ble Judges : R.C.Jain , Anupam Dasgupta J.

Advocate : Srijan Nayak , Tanushree Dasgupta , Sanjoy Kumar Ghosh , Alok Mukherjee , Raja Saha

Judgement

1. MR. Justice R.C. Jain, Presiding Member-Challenge in this appeal is to the order dated 28.3.2006 passed by the West Bengal State Consumer Disputes Redressal Commission, Kolkata (in short, ''the State Commission'') in SC Case No. 43/O/02. By the impugned order, the State Commission has virtually dismissed the complaint filed by the appellant/complainant by holding that the complainant failed to establish any deficiency in service on the part of the respondent, National Insurance Company Ltd. (hereinafter referred to as ''the Insurance Company'') in repudiating the insurance claim of the complainant in regard to the loss it sustained to the insured oil mill due to fire. The State Commission, however, upheld the stand of the Insurance Company that the latter was liable to pay only a sum of Rs. 5,78,400, as per the report of the last Surveyor.

2. WE have heard Mr. Srijan Nayak along with Mr. Sanjoy Ghosh, learned Counsel representing the appellant, and Ms. Tanushree Dasgupta, learned Counsel representing the respondent (Insurance Company) and have given our thoughtful consideration to their submissions.

3. THE consumer dispute raised in the present case related to the non-settlement of insurance claim amounting to Rs. 19 lakh on account of damage suffered to the plant, machinery and stocks in the oil mill of the complainant, which were insured by the Insurance Company. It would appear that on, being informed of the said peril due to fire, the Insurance Company, in the first instance, appointed

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a Surveyor, namely, Bhadra and Associates Pvt. Ltd., who inspected the site as well as the documentary material produced by the complainant along with the claim, made certain queries and called upon the complainant to furnish some more information and documents. Afterwards, the Insurance Company appointed another Surveyor/investigator, viz., Mr. M.C. Daga, for investigating the circumstances leading to the loss, followed some other investigator/Chartered Accountant/Surveyor. Lastly, based on the report submitted by Mr. S.N. Mitra, Chartered Accountant, the loss and damage to the plant, machinery and stocks was assessed at Rs. 5,78,400, which amount the Insurance Company offered to the complainant. But the complainant refused to accept the same on the ground that it was not full or reasonable indemnification of the loss suffered by it. The complaint came to be filed but the Insurance Company, despite being represented on record, failed to file any written version of defence to the complaint. It would, however, appear that based on the contentions raised on behalf of the respondents (Insurance Company) during the course of arguments and by means of written notes of arguments, the State Commission has taken the view that the stand of the Insurance Company was justified in offering to settle the claim at the sum of Rs. 5,78,400, which was in consonance with the assessment of loss made by Mr. S.N. Mitra, Chartered Accountant.

4. LEARNED Counsel for the appellant would assail the impugned order on a variety of grounds, the first amongst them being that, in view of the failure of the respondents (Insurance Company) to put any defence to the complaint made in the complaint, the State Commission was not justified in discarding the claim of the complainant, which found support from the reports of the earlier Surveyors. Secondly, he contended that the Insurance Company, having once appointed M/s. Bhadra and Associates Pvt. Ltd. as the Surveyor to assess the loss, was hardly justified in appointing another Investigator or Surveyor or Chartered accountant, etc., and in any case, no reason for appointing the subsequent Surveyor/Investigator, etc., was disclosed. Learned Counsel also stated that none of the reports of the Surveyor/Investigator/Chartered accountant were produced by the Insurance Company on the record of the State Commission nor were copies of the same furnished to the complainant so as to enable it to raise objections to the said reports. Going by the impugned order itself, it would be manifest that neither any written version nor any affidavit in support of the contentions raised by the Insurance Company at the fag end of the hearing was filed. Still, the State Commission has upheld the said contentions without looking into the said reports.

5. LEARNED Counsel for the respondent (Insurance Company) could not enlighten us on the circumstances why it had not been possible for the Insurance Company to file written version, more particularly, the reasons and circumstances under which they felt it necessary to appoint Surveyors/ Investigators/ Chartered Accountants, one after the other, without disclosing any reasons to the complainant for doing the same. The Supreme Court, in regard to the provisions of Section 64 UM of the Insurance Act, 1938, in a recent case

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titled Sri Venkateswara Syndicate v. Oriental Insurance Company Ltd. and Anr., III (2009) CPJ 81 (SC)=2009 CTJ 1189 (SC) (CP), has reiterated its view that Section 64 UM of the Insurance Act permits an insurer to appoint a second Surveyor but, while doing so, it has to give satisfactory reason for not accepting the report of the first Surveyor and the need to appoint a second Surveyor. The said decision has further held that the Insurance Company cannot go on appointing surveyors one after the other to get a tailor-made report. The Court has emphasised the need for the Insurance Company giving valid reasons for appointing a second or subsequent Surveyor and for not accepting the report of the first/previous Surveyor. The said authority squarely governs the facts and circumstances of the present case because it is apparent on record that the Surveyors, one after another, may be is the guise of Investigator or Chartered Accountant, came to be appointed in this case. Surprisingly, the Insurance Company did not care to file or produce any of the reports of these Surveyors which would have made the circumstances in regard to appointment of Surveyors clear. These aspects have been overlooked by the State Commission while passing the impugned order.

6. IN view of the above discussion, we consider it expedient in the interest of justice to remit the complaint to the Board of the State Commission for deciding the same afresh after due consideration of the entire record, more particularly, all the reports of the Surveyors/Investigators/Chartered Accountant, as may be filed by the Insurance Company on record. The Insurance Company is also granted an opportunity to file a written version of defence to the complaint in addition to all the reports of the Surveyors/Investigators/Chartered accountants before the State Commission. This would be subject to cost of Rs. 10,000 payable by the Insurance Company to the complainant. On filing of the written version and the said reports, the parties shall be given due opportunity to lead their evidence and the complaint shall be heard and disposed of afresh in accordance with law and expeditiously. Parties are directed to appear before the State Commission on 2.3.2010 for further directions in the matter.

7. THIS appeal stands partly allowed in terms of the above directions.

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