(2013) 10 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

Anil Chandra Dey APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : 2013 0 NCDRC 725

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : SHUVODEEP ROY , MOHAN BABU AGARWAL

Judgement

1. THIS revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 27.12.2007 passed by the Assam State Consumer Disputes Redressal Commission (for short ''the State Commission '') in FA No. 6/2006, "New India Assurance Co. versus Anil Chandra Dey " and FA No. 23/2006, "Anil Chandra Dey versus New India Assurance Co. Ltd. and Anr. " Both these appeals were directed against the order passed by the District Forum on 12.12.2005 on the complaint filed by Anil Chandra Dey vide which a sum of Rs.2,10,000/ - was ordered to be paid by the OP insurance company to the complainant for damage to his residence during floods along with interest @9% p.a. and Rs.7,000/ - as compensation for mental agony and Rs.2,000/ - as cost of litigation. Vide impugned order, the appeal no. 23/2006 filed by the complainant for enhancement of compensation was dismissed, whereas the appeal filed by the insurance company was partly allowed and it was directed to pay a sum of Rs.97,000/ - as cost of damage along with Rs.3,000/ - as compensation for mental agony along with interest @ 8% p.a. from the date of the claim till realisation.

2. BRIEF facts of the case are that the complainant/petitioner Amit Chandra Dey got his residential house insured with the OP, New India Assurance Co. Ltd. vide policy no. 530600/48/01/0045 for the period 29.06.2004 to 28.06.2005 against fire, flood, earthquake, etc. It has been mentioned in the complaint that the residential building and the household goods like, furniture, fittings, personal effects, books etc. were got insured for a sum of Rs.12.6 lakh. The insurance

company, however, says that the said building and articles were insured for a sum of Rs.8.6 lakh. In the month of July, 2004, the said premises were badly affected by floods. It has been stated that the flood water remained stagnant at the premises from 20.07.2004 to 03.08.2004, causing lot of damage to the building as well as the household articles. The complainant informed the insurance company on 21.07.2004 about the flood. The insurance company deputed a surveyor N.R. Paul for assessing the loss and damage, who visited the residence of the complainant on the same day. The said surveyor assessed the loss to be Rs.30,050/ -. The insurance company sent a letter to the complainant on 07.01.2005, asking him to accept the amount of Rs.30,050/ - as full and final settlement, but the complainant refused to accept the amount, saying that the assessed amount was much less than the loss suffered by him. He requested the insurance company to reconsider the assessment, but his request was turned down by the OP, insurance company. The complainant then filed a consumer complaint before the District Forum Cachar, claiming an amount of Rs.2,83,500/ - alongwith interest @12.5% and compensation for mental agony etc. The District Forum vide their order dated 12.12.2005 asked the insurance company to pay a sum of Rs.2,10,000/ - along with interest @9% p.a. from the date of complaint and also to pay Rs.7,000/ - for mental agony, etc. and Rs.2,000/ - as cost of litigation. Against this order, two appeals as stated above were filed before the State Commission. The appeal filed by the complainant for enhancement of compensation was dismissed and the appeal filed by the insurance company was partly allowed and the State Commission ordered to pay a sum of Rs.97,000/ - for damage and Rs.3,000/ - for mental agony along with interest @8% p.a. on all these amounts. It is against this order that the present petition has been filed by the complainant. At the time of hearing before us, learned counsel for the petitioner has drawn our attention to the contents of the insurance policy in question, saying that the damage caused by the floods to the building as well as to the household articles is fully covered under the policy and adequate compensation should have been paid by the insurance company to him. Referring to the report of the surveyor, the learned counsel stated that the said report is not conclusive as held by the Hon ''ble Supreme Court in "New India Assurance Co. Ltd. versus Pardeep Kumar " [(2009) 7 SCC 787], in which it has been held that the approved surveyor ''s report may be basis or foundation for settlement of a claim by the insurer in respect of loss suffered by insured, but such report is neither binding on the insurer nor insured. Learned counsel maintained that the factual position about the floods and the consequential damage had not been disputed by the other party and the order of the State Commission also shows that the factum of damage was an admitted fact. Learned counsel further stated that the claim made by the petitioner was supported by documentary evidence and photographs taken during the days of the floods. He had also produced concerned contractor before the District Forum who made a statement that he had done the repair works in the premises for which bill for Rs.1,43,000/ - was raised and the money had also been received by the contractor.

3. LEARNED counsel for the respondent insurance company stated that the District Forum had not given any reasons for coming to the conclusion that the complainant was entitled to get a sum of Rs.2.5 lakh for compensation for damage. They made an appeal against the order of the District Forum but they had not challenged the impugned order passed by the State Commission and payment had also been made as per the order passed by the State Commission. The learned counsel further stated that the State Commission had come to the right conclusion that boundary wall was not part of the residential building and hence, compensation could not be given for damage to the boundary wall. Learned counsel pleaded that the revision petition should be dismissed.

4. WE have examined the material on record and given a thoughtful consideration to the arguments advanced before us. A careful perusal of the order passed by the State Commission has revealed that the State Commission has discussed the amounts claimed by the petitioner under various items, the corresponding amount indicated by the surveyor against each item and then arrived at a figure for award of damage against each item. The State Commission have indicated that while arriving at the awarded amount, they have taken into account the surveyors '' report, the photographs, the contractors bill, money receipts, etc. The State Commission reached the conclusion that a sum of Rs.97,000/ - should be given to the petitioner against the claim for Rs.2,83,500/ - filed by him. Although, no scientific explanation has been given for arriving at a figure against each item, but on the other hand, the petitioner has also failed to provide any documentary proof which may lead to the conclusion that he is entitled to get compensation to the tune of Rs.2,83,500/ -. Even at the time of arguments, learned counsel for the petitioner could only say that they had some supporting documents for the repair work amounting to Rs.1,43,500/ - only.

5. ON the item regarding repairing, flooring and plastering of the house, the State Commission has awarded an amount of Rs.32,000/ -, against the claimed amount of Rs.73,500/ - whereas the amount assessed by the surveyor is only Rs.14,250/ -. It is felt that since the water remained stagnant in the house in question for a number of days, the petitioner may have spent more amount on repairing, flooring and plastering etc. It is felt that a further amount of Rs.20,000/ - more may be awarded to the petitioner against this item, making the total amount of compensation to be Rs.1,17,000/ - in addition to Rs.3,000/ - already awarded as compensation for mental agony. This petition is, therefore, partly allowed and it is ordered that a sum of Rs.20,000/ - more shall be payable to the petitioner on account of repair, flooring and plastering of the house. There shall be no order as to costs.

