(2009) 07 NCDRC CK 0024

In the National Consumer Disputes Redressal Commission

ASHOK KUMAR ROY — APPELLANT

Vs

Oriental Insurance Co. Ltd. and Ors. — RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Citation : 2009 4 CPJ 101

Hon'ble Judges : R.K.BATTA , P.D.SHENOY J.

Final Decision : Complaint disposed of

Judgement

1. THE complainant is the proprietor of M/s. Loknath Enterprise, Ram Nagar, Industrial Area Malinibil, District Cachar, Assam, which processes highly inflammable/combustible lubricant oil for manufacturing/processing of wood oil, black putty, gear oil, grease, turpentine oil, etc. The complainant entered into a contract with Oriental Insurance Co. Ltd. for renewal of policy for coverage under Standard Fire and Special Perils in respect of his whole industrial unit through five insurance policies and the period of cover was w.e.f. 31.3.2001 to 30.3.2002 to the extent of Rs. 50,00,000 as sum assured.

2. ON the midnight of 27/28.3.2002, at about 2.30 a.m., accidental fire broke out resulting in large scale and complete damage of the main factory building, underground reservoirs, internal electrification and stock, etc. and the lime godown was completely gutted in fire. Fire Brigade was intimated of the mishap and they rushed to the spot, fought for some hours to extinguish the fire and ultimately it was controlled when there were hardly anything left.

3. THE news of the said accident was reported in the local daily on the next day and the complainant informed next day the Divisional Manager of the Oriental Insurance Co., Silchar, Assam requesting him to settle the claim. The Divisional Manager of the Oriental Insurance Co. sent a registered letter dated 1.4.2002 informing the complainant that it had already cancelled the policy of the complainant w.e.f. 11.8.2001 under General Condition No. 5 of the policy. The Divisional Manager claimed to have informed the complainant about the same through its registered letter dated 27.7.2001. The said letter never reached to

the complainant. As there was no response from the Insurance Company the complainant sent a reminder to the Insurance Company. The Insurance Company informed the complainant of its earlier decision of unilateral cancellation of the complainant''s aforesaid policies. The complainant asked the Insurance Company to give a copy of the letter dated 27.7.2001 whereby the Insurance Company purported to have cancelled the policies and requested the Divisional Manager to provide the name, address, registered post No. of the post office where the letter was delivered. The Divisional Manager stated that their letter dated 27.7.2001 was returned with the postal remarks "Not known" on 7.8.2001. The complainant wrote a letter to the Post Master, Vivekananda Road Post Office on 19.4.2002 seeking details of the letter. The Sub -Post Master through his letter dated 20.4.2002 informed the complainant that it had received the R.L. No. 9444 on 30.7.2001 and returned to the sender with the postal remark "addressee not known". Therefore, the complainant has stated that the postal remark "Not known" is not a service in the eyes of law and equity. The Insurance Company did not take any fresh steps to inform the complainant about the cancellation of the policy and, therefore, the complainant was not aware of this.

4. AS per Clause (5) of the Schedule of Contract of Insurance, without giving 15 days'' prior notice to the complainant, the Insurance Company cannot arbitrarily terminate the contract of insurance with the complainant. The Insurance Company''s inaction towards assessment of loss compelled the complainant to engage an independent Surveyor/Loss Assessor/Valuer at their expense to evaluate the actual loss. After thorough investigation, the Surveyor submitted a report on 5.6.2002, assessing the loss at Rs. 50,05,899.00. The Auditor''s report in support of stocks in hand was also enclosed.

5. FURTHER , the Circle Officer, Sadar Revenue Circle, Silchar has issued a certificate on 7.6.2002, certifying the loss suffered to the tune of Rs. 50,00,000 on the basis of the inquiry report of the L.R. Staff. The Director of the Fire Service, SFSO, Assam, Guwahati has also given a certificate. Accordingly the complainant alleging gross deficiency and negligence, disservice and unfair trade practice had claimed Rs. 50,05,899 from the Insurance Company along with Rs. 10,00,000 towards damages/compensation. Case of the Insurance Company

6. THE Insurance Company stated the postal department should have been made a necessary party. The contract of the insurance is based not only on good faith but utmost good faith. Insurance Company has every right to terminate the contract. The policy proposal shows the address of the insured as M/s. Loknath Enterprises, Vivekananda Road, Silchar and the communication regarding cancellation of the policy was sent to the same address. While processing the claim of the complainant, which had arisen in the first year of the policy, the Insurance Company did not find the antecedents of the complainant to be appropriate and the same did not conform to the expected standards of ethics and conduct. Therefore, the Insurance Company decided not to deal with the complainant any further and a decision was taken not to continue with the risk

and cancel all the policies. Accordingly, a letter to this effect dated 27.7.2001 was issued. The letter was returned with the postal remarks "addressee not known". As the Insurance Company was communicating with the complainant at the same address, the Insurance Company had discharged its responsibility in sending the letter cancelling the policies at the correct address. There appears to be some grave collusion between the postal authorities and the insured in ensuring that the letter was not delivered to the insured. Further the needle of suspicion is pointed towards the complainant, as the alleged fire is purportedly had taken place just two days prior to the expiry of the policy. The present complaint involves complicated issues of fact and law requiring elaborate and detailed evidence, the complainant should approach the Civil Court. Further as the pecuniary jurisdiction of this Commission has been raised to Rs. one crore and since the relief prayed for in this complaint is Rs. 50,05,899 this should be relegated to the concerned State Commission. Submissions of the learned Counsel for the complainant

7. THE learned Counsel for the complainant submitted that it is not in dispute that the five Insurance policies taken for the period 31.3.2001 to 29.3.2002 were standard fire policies. Further it is not in dispute that the fire accident took place in the early hours of 28.3.2002 resulting in large -scale damage to the tune of Rs. 50,05,899 and the quantum was not disputed. When the compensation was claimed, the Insurance Company repudiated the liability by taking the following stand: (a) The Insurance Company has unilaterally cancelled the policy on 27.7.2001. There was no cover after 28.7.2001. (b) There was a fire accident just two days before the expiry of the policy period which itself generates suspicion. (c) While the fire accident took place on 28.3.2002, the petitioner intimated about the same on 28.2.2002, which is anachronistic.

8. THE learned Counsel for the complainant submitted that the so -called cancellation letter dated 27.7.2001 admittedly never reached the complainant. It went back to the Insurance Company unserved with the postal endorsement "addressee not known". The Insurance Company has attempted to mislead the Commission by saying that the petitioner gave two conflicting addresses, which is not correct. One of the addresses was pertaining to the factory and another address pertains to the residence -cum -registered office.

9. WHEN the important communication like cancellation was returned unserved, there should have been some further attempt by the Insurance Company to serve it again either to the other address or by some other means. Further the letter is not a cancellation order. It is only a proposal to cancel on a future date. In desperation the Insurance Company alleged collusion between the complainant and the postal department.

10. THE main stand of the Insurance Company that the policy was cancelled by its letter dated 27.7.2001 is untenable. It ensues grave civil consequences. This cannot be done without a prior "Show Cause Notice". The policy condition does not say that cancellation could be unilateral and without notice. It requires 15

days'' prior notice plus return of balance premium. A bilateral contract of insurance cannot be unilaterally cancelled without any rhyme or reason.

11. A close reading of the said letter dated 27.7.2001 mentions from this day our liability ceases'', which means from 27.7.2001, which is in violation of condition No. 5 that requires 15 days'' notice. Now in the evidence on affidavit alleged bad antecedents of claimant is said to be the reason for cancellation. If that is so, the communication dated 27.7.2001 should have mentioned this reason. The fact that the fire accident took place just one day before the expiry of Insurance Policy per se cannot be a valid reason to repudiate the claim as there cannot be a rule that one day before the last day of the period of insurance, a fire accident cannot take place. This stand is ex facie untenable. The stand that a letter about fire accident dated 28.3.2002 was sent on 28.2.2002 shows immaturity on the part of the Insurance Company, as it is a clear typographical error. In the letter, it is specifically stated that the accident occurred on the night of 27/28.3.2002.

12. THE learned Counsel quoted certain judgments to support his stand. Submissions of the learned Counsel for the respondent

13. LEARNED Counsel for the Insurance Company submitted that the complainant has given his address in the proposal form as M/s. Loknath Enterprise, Vivekananda Road, Silchar -788007, at which all communication were sent including the cancellation letter. He has also given a declaration at the end of the proposal form in the following words: " I/We hereby declare that the statements made by me/us in this Proposal Form are true to the best of my/our knowledge and belief and I/we hereby agree that this declaration shall form the basis of the contract between me/us and "THE ORIENTAL INSURANCE COMPANY LIMITED."

14. A perusal of the communication dated 27.7.2001 shows that the address given is correct. This notice clearly mentions number of all the fire policies and it is stated in this letter that we are going to cancel the subject policies with effect from 11th August, 2001, under general condition No. 05 of the Policies and in this connection we shall repay the ratable proportion of premium for unexpired period. General condition No. 5 of the Policy reads as follows: "The insurance may be terminated at any time at the request of the insured, in which case the company will retain the premium at customary short period rate for the time the policy has been in force. This insurance may also at any time be terminated at the option of the company on 15 days'' notice to that effect being given to the insured, in which case the company shall be liable to repay on demand a rateable proportion of the premium for the unexpired term from the date of the cancellation."

15. FURTHER as the notice was issued as per Condition No. 5 of the Insurance policy, the policy got cancelled after 15 days of the notice i.e. on 11th August, 2001. It is not necessary to give another notice to the complainant company to state that as 15 days have lapsed, the policy is automatically cancelled. Findings:

16. THE Hon''ble Apex Court in Dr. J.J. Merchants and Ors. v. Shrinath Chaturvedi, III (2002) CPJ 8 (SC)=IV (2002) SLT 714=(2002) 6 SCC 635 has held that even if complicated questions of law and facts are involved, the Consumer Fora is competent to decide consumer cases. This complaint was filed on 4.12.2002 and the raising of the pecuniary jurisdiction of the National Commission to Rs. one crore was brought into effect from 15.3.2003. Accordingly this complaint is maintainable before the National Commission. This issue is decided by this Commission in Smt. Babita Aggarwal and Ors. v. Dr. S.K. Goel, Original Petition No. 379/2002, decided on 26.3.2003), 2003 CTJ 392 (CP) (NCDRC).

17. THE Insurance Company has contended that it has sent a letter by Regd. Post on 27.7.2001 cancelling the policy in question but there is no proof that this letter had reached the complainant. On the other hand, there is a clear proof that this was returned to the Insurance Company on 6.8.2001 as the addressee was not known''. As this is an important document, the Insurance Company should have either sent it again by Regd. Post/speed post or by hand delivery (Muddam) as the Divisional Office of the Insurance Company as well as the office of the complainant are located at the same place i.e. Silchar, but this was not done. This shows the callous attitude of the Insurance Company.

18. FURTHER a perusal of General Condition No. 5 shows that either the Insurance Company or the complainant has a right to discontinue the contract by giving 15 days'' time. As against this, the Insurance Company has written as follows: It may kindly be noted that we are not at risk with effect from this day, which is contrary to condition No. 5. In the first para, the Insurance Company had stated in the letter purported to have been sent on 27th July, 2001 as follows: "We are going to cancel the subject policies with effect from 11th August, 2001." The second para of the letter starts with the following sentence: "Relevant papers pertaining to the cancellation will be served on you in due course."

19. SO , the Insurance Company has committed to the serving the relevant papers on the complainant. There is no proof of having served the relevant papers on the complainant at all. On the other hand, the Insurance Company claims to have sent by ordinary post the discharge voucher. We are surprised to note that why should the important document like discharge voucher be sent by ordinary post and not by Regd. Post/Speed Post or by hand.

20. THE Insurance Company has alleged that there was collusion between the complainant and the postal authorities but the Insurance Company has not shown any proof to support this allegation. The Insurance Company should have in the normal course appointed an independent Surveyor/Loss Assessor to assess the loss, which was not done by them. Therefore, the complainant was forced to appoint an independent Surveyor/Loss Assessor/Valuer at his own expenses and he submitted a report assessing total estimated loss at Rs. 50,05,899. The complainant has also submitted auditor''s report in support of stocks in hand as

on 27.3.2002, i.e. the date of the accident.

21. A person or a company takes insurance policy to cover any accident/ catastrophe. The accident can take place at any time during the currency of the policy. It can happen on the first day or on the last day. There is no stipulation in the policy that the cover is not valid if the peril takes place a day prior to the expiry of the policy.

22. WE are surprised to note that a typographical error in a communication from the complainant has been misconstrued by the Insurance Company i.e. to say a letter dated 28.2.2002 addressed to the Divisional Manager intimating the loss due to fire on 27/28.3.2002 mid night at about 3.00 a.m. The date was inadvertently typed as 28.2.2002 when the letter itself shows that the fire broke out on the night of 27.3.2002. The Insurance Company should not have raised any doubt especially when there is an acknowledgement from the Insurance Company with the seal and signature that it was received on 28th March, 2002. This shows that the insured has intimated about the loss due to fire without any delay. The fire fighting efforts made by the fire force is also not in doubt. The independent Surveyor who has assessed loss incurred by the insured also filed an affidavit in support of his report.

23. THE learned Counsel for the Insurance Company has quoted the judgment of the Single Member Bench of the Madhya Pradesh High Court in the case of J.K. Enterprises v. State of Madhya Pradesh and Ors., AIR 1997 MP 68, wherein it was held as under: "The respondents have sent the communication of the acceptance of the offer on the said address but the same was returned. As the respondents have sent the acceptance by registered cover dated 12.2.1993 on an address given by the petitioner, the same shall be deemed to have been accepted, notwithstanding the fact that it was not delivered to the petitioner. In my opinion, the obligation on the part of the respondents shall be complete the moment the communication is put in transit on the address of the petitioner. The address given on the registered cover was given by the petitioner itself. As such, I have no hesitation in holding that the offer of the petitioner was in fact accepted."

This ruling cannot have any application to the facts and circumstances and controversy before us. This ruling is with reference to offer and acceptance of proposal in relation to contract where the principles applicable are altogether different and are based upon the famous quotation of Anson "offer is to acceptance what a match stick is to the train of gun powder". As against this, the learned Counsel for the complainant has quoted several judgments: In Unit Trust of India v. Ravinder Kumar Shukla & Ors., IV (2005) CPJ 10 (SC)=VII (2005) SLT 104=(2005) 7 SCC 428, the Hon''ble Apex Court has held as under - "Thus the law is that in the absence of any contract or request from the payee, mere posting would not amount to payment. In cases where there is no contract or request, either express or implied, the post office would continue to act as the agent of the drawer. In that case the loss is of the drawer."

24. IN Union of India and Ors. v. Dinanath Shantaram Karekar and Ors., VII (1998) SLT 124=(1998) 7 SCC 569, the Hon''ble Apex Court has held as under: "The respondent was an employee of the appellants. His personal file and the entire service record was available in which his home address also had been mentioned. The charge -sheet which was sent to the respondent was returned with the postal endorsement not found''. This indicates that the charge -sheet was not tendered to him even by the postal authorities. A document sent by registered post can be treated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities, and the registered cover was returned to the sender with the endorsement not found'', it cannot be legally treated to have been served. The appellant should have made further efforts to serve the charge -sheet on the respondent. A single effort, in the circumstances of the case, cannot be treated as sufficient. That being so, the very initiation of the departmental proceedings was bad. It was ex parte even from the stage of the charge -sheet which, at no stage, was served upon the respondent."

25. OUR earlier observation that the Insurance Company should have made efforts to serve the letter on the complainant through another Regd. Post or Speed Post or by hand is strengthened by the observations of the Hon''ble Apex Court (supra).

26. THE Madras High Court in a Single Member Bench decision in the case of Gnanamuthu v. Most Rev. Justin Diraviam has held as under: "The last point argued was that Section 106 required a notice in writing signed by or on behalf of the person giving it and that in this case there was no signature of the person giving the notice. It was contended that the defendant received only a telegram, which did not contain any signature as such. It was, therefore, argued that the provisions of Section 106 of the Act had not been complied with. In this connection a decision of the Allahabad High Court in Hiralal v. Dy. Commissioner, Rai Bareli was referred to. That was a case in which the Court of Wards was the landlord. A notice in a manuscript was prepared in the office and was duly signed by the Deputy Commissioner concerned. However, what was sent to the tenant was not that notice, but a typed copy thereof with the name of the Deputy Commissioner typed at the end of it. There was no signature of the Deputy Commissioner or any one else. It was held on these facts that there was no signature in the notice sent to the tenant and, that, therefore, it was not (sic) a valid notice. Unfortunately for the landlord in this case, this objection taken before me appears to be well founded. The section requires every notice to be in writing signed by or on behalf of the person giving it and either be sent by post to the party or be tendered or delivered personally to such party or to one of his family servants at his residence, or if such tender or delivery is not practicable affixed to a conspicuous part of it. On a reading of the section it is clear that the notice, which reaches the party, must contain the signature of the person giving the notice or his agent. In the present case it is true that as it was tendered to the Telegraph Office the telegram must have contained the signature of the party

giving it or his agent. But the copy that was received by the tenant did not contain the signature. The name of the sender was only typewritten. The notice suffers from the same infirmity as in the Allahabad decision in Hiralal v. Dy. Commissioner, Rai Bareli and is not thus valid". (Emphasis supplied)

27. IN the case of R. v. Appeal Committee of County of London Quarter Sessions, Ex parte Rossi, 1956 (1) All.ER 670, wherein it was held as under: "To sum up, when service of process is allowed by registered post, without more being said on the matter, then if the letter is not returned, it is assumed to have been delivered in the ordinary course of post and any judgment or order by default obtained on the faith of that assumption is perfectly regular. It will not as a rule be set aside except on payment of costs and showing of merits : see T.O. Supplies (London) Ltd. v. Jerry Oreighton Ltd., (9) (1951) 2 All E.R. 992). If, however, the letter is returned undelivered and nevertheless, notwithstanding its return, a judgment or order by default should afterwards be obtained, it is irregular and will be set aside ex debito justitiae. The order of Quarter Sessions here was irregular because there was no proper service and it should be set aside. I would allow the appeal accordingly".

28. FURTHER in Hewitt v. Leicester City Council, 1969 (2) All.ER 202, it was held as under: "This is a case like Rossi''s case (2) where the time of service was important. The valuation depended on it. Once it appeared that the letter of 20th May, 1965 was returned through the post marked gone away'', then it was quite plain that it was not served at all. We are not bound to deem'' a notice to be served at a particular time, when we know that in fact it was not served at all. The notice to treat was not served on 20th May, 1965. It was not served until 23rd December, 1965. The valuation should be 1,500 and not 1,100. I agree with the reasons given by the Lands Tribunal in this case for the decision and I would dismiss the appeal."

29. IN view of the above judgments of the Hon''ble Apex Court and as well as the British judgments, it is crystal clear that most important communication dated 27.7.2001 relating to unilateral cancellation of the policy was not served on the complainant. Hence there was no cancellation of the policy and the dolicy is deemed to have been in existence and continued till the currency ended on 29.3.2002 and therefore, the peril had occurred during the currency of the policy.

30. THE Insurance Company should have appointed a statutory Surveyor to assess the loss, which the Insurance Company has failed to do, forcing the complainant to appoint an independent Surveyor at his own cost. After hearing both the parties, it was decided to take on record the application filed by the complainant for amending his prayer to claim 18% interest per annum on the quantum prayed and also the additional documents filed by him in support of his contention. Similarly we have also taken on record the evidence by way of affidavit filed on behalf of the Oriental Insurance Company Ltd. on 24th July, 2007 along with the other documents.

31. IN the additional affidavit filed by the Insurance Company through Shri Dilbagh Singh, Manager at Head Office, Oriental Insurance Company Ltd. has submitted that the Insurance Company has paid Rs. 2,90,000 to the complainant in the first year of the policy. However, while processing the claim of the complainant, which had arisen in the first year of the policy, the Insurance Company did not find any antecedents of the complainant to be appropriate and the same did not conform to the expected standards of ethics and conduct. Hence, it was decided to cancel the policy but the letter dated 27.7.2001 had come back with the postal remarks "Not known'' though it was sent to the correct address at Vivekananda Road, Silchar. Thereafter, the Insurance Company processed the necessary papers for the refund voucher for Rs. 18,613 along with the calculation and a covering letter dated 28.8.2001 was addressed to the complainant at the same address and it was sent by ordinary post to the petitioner as is evidenced by the entry in the despatch register of the petitioner company, extract of which was enclosed.

32. WE fail to appreciate why such an important document was sent by ordinary post and why it was not sent by hand or by speed post. There is no proof of receipt of the same. The judgments of the Apex Court and also the British judgments quoted above clearly lays down the law relating to service. An important communication dated 27.7.2001 was not served on the complainant as also the ordinary post letter dated 28.8.2001. We cannot give credence to these two communications.

33. THE complainant has filed the report of the survey conducted by an independent assessor -cum -valuer appointed by the complainant compelled by the circumstances of inaction by the Insurance Company to appoint the statutory Surveyor. The independent Surveyor has covered all details relating to the type of policy, sum assured, period of insurance and he has also mentioned police report, report from Director, Fire Service, newspaper cutting, description of building, Lime shed damages which have taken place during the occurrence of the accident, estimate of losses on building (factory), second chamber, estimate of losses on shed over underground reservoirs, estimate of losses on firing shed, estimate of damage of underground tanks, estimate of losses on lime godown, estimate of losses of internal electrification of building, estimate of losses on plants and machineries, estimate of other losses along with plants and machineries, estimate of losses on stock, etc., etc. and he has arrived at total estimated loss at Rs. 50,05,899. This report is prepared on physical inspection and statement given by insured. The Chartered Accountant''s report has also been filed along with the report of the Circle Officer and Officer ncharge, Silchar Police Station, Cachar, Silchar. The complainant has also filed supporting documents.

34. IN M/s. Shobika Attire v. New India Assurance Co. Ltd. and Anr., IV (2006) CPJ 3 (SC)=VI (2006) SLT 598=(2006) 8 SCC 35, the Hon''ble Apex Court has held as under: "In our view, the appellants had discharged the initial burden

regarding destruction, damage of the showroom and the stocks therein by fire and riot in support of the claim under the insurance policy and it was for the Insurance Company to disprove such claim with evidence, if any. In our view, the Insurance Company, despite the report of the investigator, failed to establish that the claim of the appellants was not justified and was not covered by the policy of insurance.

Inasmuch as the Insurance Company was within its rights to cause an inquiry into the incident and it approved the appellants'' claim of Rs. 1,02,38,738 based on the report of the investigator, we are unable to agree with the submission made on behalf of the appellants that apart from the actual claim, the appellants are also entitled to payment of compensation towards hardship, mental agony and harassment. We, therefore, allow the appeal and direct the respondent Insurance Company to pay to the appellants the balance amount of Rs. 97,83,827 together with interest at the rate of 9% per annum from the date of the claim till payment. Such payment is to be made within a month from date. There will be no order as to costs."

35. THE complainant has claimed the loss assessed by the independent Surveyor to the tune of Rs. 50,05,899 along with Rs 10 lakh towards damages and compensation. The complainant has also claimed 18% interest on the same amount. As against this considering the facts and circumstances of the case, we deem it proper to award Rs. 50,05,899 along with 9% interest p.a. from the date of the complaint till the date of payment. In view of this, we are not inclined to grant compensation of Rs. 10 lakh claimed by the complainant. The amount awarded shall be paid within one month from the date of pronouncement of this order. There shall be no order as to cost.