**(2015) 05 NCDRC CK 0018**

**In the National Consumer Disputes Redressal Commission**

**Case No :** 87 of 2004

Avon Organics Limited APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD RESPONDENT

**Date of Decision :** 14-05-2015

**Acts Referred:**

**Citation :** 2016 1 CPJ 40

**Hon'ble Judges :** AJIT BHARIHOKE , Rekha Gupta J.

**Final Decision :** Complaint dismissed

# Judgement

1. COMPLAINANT M/s Avon Organics being aggrieved of non settlement of his insurance claim in respect of its stocks damaged in a fire accident at the premises of its job worker M/s G.P.Chemicals A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad, has raised the instant consumer dispute.

2. BRIEFLY stated, case of the complainant is that there has been relationship of insurer and insured between the parties since long and the complainant had been taking insurance policies to cover loss to the stores and the stocks lying at his premises i.e. Survey No.18, Yawapur Village, Sadasivpet, Medak District, Andhra Pradesh. It is alleged that the complainant was having two insurance policies bearing number 612500/11/01/00243 and 612500/11/01/00244 which were to expire on 11.06.2002. The complainant, therefore, vide letter dated 10.06.2002 requested the opposite party insurance company to renew the said insurance policies covering stocks lying at Survey No.18, Yawapur Village, Sadasivpet, Medak, Andhra Pradesh and at the job work place G.P.Chemicals A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad. Alongwith the letter, a cheque of Rs.3,76,192/ - drawn at State Bank of Hyderabad was sent towards renewal premium. It is alleged that pursuant to the aforesaid letter, the opposite party insurance company renewed the insurance policies for the sum insured Rs.5,60,00,000/ - and Rs.4,80,00,000/ - but did not mention the job work place as the premises insured. The complainant in good faith kept the insurance policies with him thinking that the renewed policies must have been issued in

terms of the letter dated 10.06.2002 containing the proposal for renewal of insurance policy. Unfortunately, in the early hours of 22.12.2002, a fire broke out at the premises of the job worker G.P.Chemicals A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad, resulting in loss to the raw / semi finished stock belonging to the complainant which was entrusted to G.P.Chemicals A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad for finishing on job work basis. Fire accident was reported to the police, fire authorities as well as the opposite party. The opposite party appointed a surveyor who visited the site on 03.01.2003. According to the complainant, surveyor submitted report to the opposite party but copy of the same was not supplied to him. Thereafter on 31.01.2003 another surveyor M/s Srivatsan Surveyors Pvt. Ltd. was appointed who as per the information of the complainant assessed the net loss caused due to fire to the tune of Rs.1,31,64,484/ - and recommended payment to the complainant. Despite that complainant has not settled the claim, which amounts to deficiency in service.

3. THE opposite party in its written statement has admitted issue of subject insurance policies. Fire accident at the premises of M/s G.P.Chemicals A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad is also not disputed. According to the opposite party, it has rightly repudiated the claim because the premises of G.P.Chemicals A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad, where the fire accident resulting in loss took place was not covered under the subject insurance policies. OP alleged that it had not received any premium for coverage of stock at the premises of G.P.Chemicals A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad nor it has covered the stocks lying there. Complainant in support of its claim has filed affidavit of T.Venkeshwara Prasad, Director (Finance) and in rebuttal opposite party has filed affidavit of M. Nagaraja Sarma, Regional Manager as also affidavit of R.Srivatsan, Director of M/s Srivatsan Surveyors Pvt. Ltd.

4. SH . R.Srivatsan vide his affidavit has proved his survey report which is annexure R -12 to the written statement. On perusal of survey report, it is clear that surveyor in the final survey report has assessed the loss caused due to fire at the premises of G.P.Chemicals A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad to the tune of Rs.1,31,64,484/ - and surveyor has recommended payment of said claim subject to admissibility.

5. THE short point which needs consideration in this complaint is whether or not the insurance policy covered loss to the goods available at the premises of G.P. Chemicals, A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad?

6. LEARNED Shri Ravinder Kumar, Advocate for the complainant on the contrary has contended that the repudiation of claim by the opposite party is totally unjustified because they have ignored the fact that non -mention of the job work place i.e. G.P. Chemicals, A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad in the insurance policy as insured premises is only an inadvertent typographical error. In support of this contention, learned counsel for the

 

complainant has drawn our attention to his letter dated 10.6.2002 particularly the subject wherein it is clearly mentioned that complainant was seeking renewal of the policy for the stocks lying at Yawapur Village, Sadasivapet, Medak District, A.P. and also G.P. Chemicals, A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad. It is contended by learned counsel for the complainant that in order to find out whether or not the opposite party has agreed to cover the job work place within the insurance policies, it would be necessary to gather the intention of the parties from the pleadings and the other accompanying facts on the file. In this regard, he has drawn our attention to the copy of the claim processing file of the opposite party and submitted that from the file noting it would be seen that the Deputy General Manager in his notes has made a categoric observation under the headline "Underwriting Aspects" that major underwriting lapses had occurred by not including the affected location and not collecting floater extra though the insured had specifically requested vide their letter dated 10.6.2002. Learned counsel has submitted that even the Regional Manager after perusing the record recommended acceptance of claim of the complainant to the tune of Rs.1,31,64,484/ -. It is argued that from this it is absolutely clear that although the intention of the parties was to cover the job work place under the insurance policy and merely because a typographical error has occurred, the claim of the complainant cannot be denied. The repudiation of the claim, thus, according to the complainant is unjustified and amounts to deficiency in service.

7. ON the contrary, Shri C.K. Gola, Advocate for the opposite party has drawn our attention to the pleadings and the insurance policy. He has contended that undisputedly the complainant company was the client of the opposite party much earlier to the accident and he originally obtained two insurance policies from the opposite party in the year 2001 which policies were renewed from year to year. Learned counsel has contended that on perusal of the insurance policy it would be seen that the insurance cover was extended only for the premises located at Yawapur Village, Sadasivapet, Medak District, A.P. There is no mention of the place G.P. Chemicals, A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad. It is further contended that merely because in the subject mentioned in letter dated 10.6.2002 for renewal of policy the complainant had mentioned the job work place G.P. Chemicals, A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad, it cannot be said that the opposite party entered into an insurance contract with the complainant to cover any loss caused at the aforesaid premises. Learned counsel has further contended that even if the letter dated 10.6.2002 is taken as a proposal for a fresh insurance to cover the job work place G.P. Chemicals, A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad, then also the issue of policy excluding the said work place amounts to a counter proposal and if at all the counter proposal was not acceptable to the complainant he could have withdrawn his proposal and sought refund of the insurance premium. In support of this contention, he has relied upon the judgment of Supreme Court in Civil Appeal No.5103/2002 decided on 23rd

 

September, 2008 in the matter of Deokar Exports Pvt. Ltd. vs. New India Insurance Co. Ltd. and also in the matter of Polymat India (P) Ltd. and anr. Vs. National Insurance Co. Ltd. and Ors., 2005 9 SCC 174. Learned counsel for the opposite party has thus summed up that there is no deficiency in service on the part of the opposite party and the complaint is liable to the dismissed.

8. WE are not convinced with the submissions made on behalf of the complainant. The complainant has placed on record photocopies of the relevant insurance policies valid w.e.f 12.06.2002 to 11.06.2003. In the insurance policies, the location of the insured premises is detailed as Yawapur Village, Sadasivpet, Medak Dist. and there is no mention of the job work place G.P.Chemicals, A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad in the policies, meaning thereby, that by these policies only, the stores and stocks lying at Yawapur Village, Sadasivpet, Medak District were insured.

9. THUS , in our view, the opposite party was justified in repudiating the insurance claim of the complainant on the ground that premises at which loss occurred was not insured. Counsel for the complainants has drawn our attention to letter dated 10.06.2002 addressed to Divisional Manager of the Opposite Party insurance company which reads as under: JUDGEMENT_113_LAWS(NCD)5_2015.htm

10. LEARNED counsel has contended that from the subject of the letter, it is clear that complainant had sought renewal of the insurance policies for stocks lying at Survey No.18, Yawapur Village, Sadasivpet as also the job work place M/s G.P.Chemicals, A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad, which proposal stood accepted when the opposite party encashed the cheque of premium sent along with the letter. We do not find merit in this contention, firstly, for the reason that nowhere in the body of the letter a specific request for insuring the goods lying at place of job work G.P.Chemicals, A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad has been made. Secondly, this letter of the complainant can only be treated as proposal for insuring the stocks lying at job work place G.P.Chemicals, A -1B, IDA, Road No.3, Ranga Reddy Nagar, Kukatpally, Hyderabad which has not been accepted by the insurance company, which is clear from the insurance policies, where G.P.Chemicals is not shown as one of the locations insured. Further, it is admitted case of the parties that insurance policies were issued in favour of the complainant in June 2002. The fire accident took place six months later on 22.12.202. If at all, the complainant had any grievance against non mention of G.P.Chemicals as one of the insured location, the complainant could easily have asked the insurance company for rectification. This, however, is not the case, which means that the complainant accepted the insurance policies issued by the opposite party as it is and, therefore, now after the fire accident, the complainant cannot challenge the repudiation of insurance claim pertaining to the loss caused at a premises which is not insured by the insurance policies.

 

11. THIRDLY , plea of the complainant cannot be sustained for the reason that in the letter dated 10.06.2002, the complainant has not given any description of goods and sum value of goods lying at premises of the job worker G.P. Chemicals nor any additional premium was paid for covering the risk of job work place G.P.Chemicals.

12. IN view of the discussion above, we find that repudiation of insurance claim on the ground that location at which fire accident took place was not insured is justified. Thus, the opposite party cannot be said to be deficiency in service under the insurance contract.

13. IN view of the discussion above, we find no merit in the complaint. Complaint is accordingly dismissed.

 