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(2001) 04 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

AVTAR KRISHEN THAPLOO APPELLANT

Vs

ORIENTAL INSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 03-04-2001

Acts Referred:

Citation : 2001 2 CLT 690 : 2001 2 CPC 205 : 2001 2 CPR 284 : 2002 1 CPJ 149

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Complaint partly allowed

Judgement

1. THIS complaint has been filed by Sri Autar Krishen Thaploo, against the Oriental Insurance Company Ltd., Branch Office Dehradun, for a claim of Rs. 6,10,000/- along with interest. The complainant has alleged that he owns a residential house of Class-I construction, situate at Peer Bagh, Hyderpora, Srinagar (J&K). The complainant is in service and stationed at Rishikesh. He purchased a Fire Policy ''A'' bearing No. 252903/11/93/00043 from opposite party. The insurance cover was of Rs. 6,10,000/- for the main building and cow shed-cum-store. The insurance was covered for risk of riots, strikes and attack of terrorists besides other perils. The period of insurance was from 4.10.1992 to 3.10.1993. The entire house was razed to ground due to fire caused by terrorists/ miscreants and anti-social elements on or about 23.11.1992. An FIR of the incident was lodged with the Police Station Budgam in Kashmir. The opposite party, Insurance Company was informed of the incident on 23.11.1992. The complainant wrote to the Divisional Manager of the opposite party at Srinagar to settle the claim early. Regular claim of Rs. 6,05,000/- was lodged with the opposite party. Verbal enquiries about the settlement of claim was made by the complainant but no tangible result has come out. A written notice was finally served on the opposite party on 27.10.1993. All these communications have not been acknowledged. The opposite party is liable to pay the compensation to the complainant because of its deficiency in service. The complainant has prayed for a grant of Rs. 6,05,000/- being the amount of loss claimed along with interest @ 18% p.a. from 1st March, 1993 till the date of actual payment. Further amount of Rs. 5,000/- has been claimed for harassment, inconvenience and cost.

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2. ALONGWITH complaint, Fire Insurance Policy, copy of police report, copies of correspondence made to opposite party, are filed. Copy of claim and affidavit supporting the allegations of the complaint has also been filed. The opposite party filed written statement and objection. In the preliminary objection it was stated that the complaint is barred by principle of res-judicata as the matter directly and substantially in issue pertains to loss/damage sustained to the alleged property in a former Complaint No. 175/1993 filed before District Consumer Forum, Lucknow and finally heard and decided on 18.8.1994. The dispute has already been decided upon and settled between the parties when the District Forum Lucknow vide its order dated 18.8.1996 has decided the complaint and the opposite party has complied with the order and an amount of Rs. 1,00,204.10 p. including interest and cost has been received by the complainant towards full settlement. The complainant, therefore, is barred from making any further claim on the said issue which stands fully satisfied and settled between the parties. There has been no deficiency in service on the part of opposite party. The complainant himself has failed to furnish relevant information and documents to the opposite party and, therefore, the complaint has not maintainable. The complainant has not come with clean hands as he has concealed facts and stated wrong facts about the alleged date of loss. He has procured the insurance cover by concealing the facts about the insurable matter which had already been damaged prior to the alleged insurance and, therefore, the opposite party is not bound to cover the risk. The opposite party further stated that inspite of the request of the opposite party''s Surveyor the complainant had failed to produce and show the ownership over the alleged property. The facts about the nature of loss and damage have been concealed. The complainant had been procuring insurance from different places and was taking advantage of the post and authority. The alleged loss was sustained by the complainant on or before 17.7.1991 when the policy was taken on 20.10.1992. Fire loss as alleged was not reported by the complainant till the date of survey and preparation of survey report. He instead of complying with the necessary formalities and giving adequate information took recourse to proceedings before the Commission and has given wrong information to mislead the opposite party for unlawful gain. As per his own admission and statement the said loss to the property occurred on or about 17.7.1991 and, therefore, complainant knowingly and malafidely concealed at the time of procuring of the alleged insurance and made mis-representation that the said property was damaged thereafter. In the circumstances the opposite party cannot assume the risk for any event of loss occuring prior to the date of the start of insurance. The loss and damages surveyed by the Surveyor Javed Husain was to the extent of Rs. 2,09,442/- without admission of any liability and the said damages and loss included the damages already claimed and settled between the parties as per order passed by the District Consumer Forum Lucknow on 18.8.1994 in Complaint Case No. 175/1993. The complainant, therefore, cannot seek any compensation for the same loss or damage. The F.I.R. lodged by the complainant on 3.1.1993 is belated against the policy''s terms and conditions.

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Counter-affidavit was filed by Sri Ram Kishore, Asstt. Admn. Officer of the opposite party supporting the pleas taken in the written statement and objection filed. The opposite party also filed certain Annexures in support of their stand. These Annexures are of the complaint made before the District Forum earlier and copies of affidavit filed there along with copies of police report and insurance policy and copies of other documents. Copy of survey report has also been annexed.

3. WE have gone through the evidence on record. WE have also heard arguments of Authorised Representative of the complainant as also of the learned Counsel for the opposite party. The Authorised Representative has argued that the complainant being a Kashmiri Pandit has migrated from Kashmir as a result of terrorist''s activities. When the complainant was informed that the property was destroyed by fire a claim was lodged to the opposite party and the police report was also made. It was also argued that the previous award of Rs. 1,00,204.10 made in Complaint Case No. 175/1993 was in respect of non-payment of claim on account of loss due to theft of property for which FIR was lodged on 17.7.1991, it pertains to the theft of domestic household items whereas the present complaint pertains to the entire house burnt which is an offence under Section 436 of I.P.C. and the same fact has been explained in the rejoinder affidavit and other evidence of the complainant. The present loss pertains to the policy for the period 4.10.1992 to 3.10.1993. It was also argued that the loss assessed by the Surveyor to the tune of Rs. 2,09,442.00 was never communicated to the complainant. The Surveyor has assessed the value of the property at Rs. 4,88,000/- instead of Rs. 6,10,000/- being the sum assured and, therefore, the complainant is not bound to accept the assessment of the Surveyor which has been done arbitrarily. He argued that opposite party cannot put forward the plea that the sum insured is excessive. On the other hand learned Counsel for the opposite party argued that the loss sustained by the complainant has been covered under the first policy of 1991 and the claim was satisfied as per orders passed by the District Consumer Forum Lucknow and, therefore, the claim stands settled. The complainant never went to Sri Nagar and after a gap of one year took another policy at Rishikesh. The facts in regard to the previous policy were concealed in the new policy. It was also argued that the items included in the present claim were also included in the earlier claim which have already been dealt with. The date of loss is presumptory. Moreover the certain informations were asked from the complainant which were never supplied to the opposite party and since the complainant did not submit the required documents the claim was treated as no claim.

4. WE first take up the preliminary objection raised by the opposite party that the present claim cannot be adjudicated because the subject-matter of the claim has already been decided by the District Consumer Forum in Complaint Case No. 175/1993. WE have gone through Annexure CA II which is the complaint filed by the complainant before the District Forum Lucknow. This complaint relates to the period of insurance from 4.10.1990 to 3.10.1991. A perusal of this complaint

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goes to show that it is in regard to loss because of theft/removal wherein household articles were stolen by miscreants which included fittings, fixtures, furniture and electric fittings. The list of these items is at Annexure CA III. The claim was made in respect of this loss under the House Holder''s Insurance Policy in which list of articles covered have been given. This is apparent from Annexures CA IV-I and IV-II. In the present complaint the insurance cover is for fire. As would be evident from the Annexure CA IV/1 it is in regard to the claim of Household Policy which was adjudicated by the District Consumer Forum. The policy covered in the present complaint is entirely different and it is a Fire Insurance Policy. Moreover a perusal of the complaint goes to show that it was a case of fire when the entire house was razed to the ground. WE, therefore, find that the subject-matter in dispute in this complaint is not the one which was the subject-matter before the District Consumer Forum Lucknow in Complaint Case No. 175/1993. The two policies are different and since this claim has been made for the loss of the house which was burnt by miscreants in Kashmir, it is a totally different claim and does not at all attract the principle of res-judicata. Therefore, this plea of the opposite party is out-rightly rejected. The opposite party has contended that the complainant has concealed the facts of earlier insurance in regard to the property in question. As already discussed in the earlier part of this judgment, the earlier insurance was for the safety of house-hold goods. The insurance covered under this complaint is for fire. Therefore, the information given in Column No. X of the Fire Insurance Proposal Form is not relevant for decision of this case. If the House Holder''s Policy had been taken again then only the entries in Column No. X of the proposal form would have been relevant. Instead policy covered under the present complaint is against the fire. The learned Counsel for the opposite party has stated that the policy is not in continuation of the previous policy. WE have already opined that the two policies were for two different purposes. One related to theft/removal of the household effects and the other related to the safety of the house against fire. In regard to the objection raised by the opposite party that the ownership of the house in question was disputed, the examination of the record goes to show that the ownership of the house in question is not in doubt. A layout plan of the house has been submitted in the evidence adduced by the complainant. The site plan shows the true state of the house which was situated in Khasra No. 476/477. The said plan was submitted to the Appropriate Authorities in 1973. Receipt of Srinagar Municipal Corporation also goes to show that house belongs to the complainant. WE, therefore, hold that even the ownership of house is not in doubt the complainant is certainly the owner of the house which according to him has been razed to the ground by miscreants who put it on fire. Objection raised by the opposite party that FIR of the incident was lodged at police station belatedly does not hold good in the circumstances of the case. It is well-known fact that the Kashmiri Pandits have gone away from the valley and it is quite natural that the loss caused to the property is reported or informed as and when the information is received and then reported to the police or to Appropriate Authority. The alleged destruction of the property took place on 23.11.1992. The

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date and time of reporting to the police was 11.30 a.m. on 3.1.1993. A perusal of the FIR goes to show that the house of the complainant has been put to fire by some persons with an ill-will. The residents of the house have already migrated from valley and offence under Section 436, I.P.C. has been committed. In the circumstances, it is not unusual that such delay should have taken place for which the complainant is helpless as in the case of Kashmiri Pandits, they have gone away from the valley. In the circumstances, there could have been no question of calling for fire fighting report. Now we come to the Surveyor report. The Surveyor Sri Javed Husain has reported that police report and fire brigade report have not been submitted to establish the date of loss. We have also discussed these aspects in the above paragraphs of the judgment. Police report is already on file which has been discussed. Survey report goes to show that the building has been gutted in fire and loss to building was partial. It has further been observed by the Surveyor that in order to restore the building it shall require demolition of damaged roofing, attic floor and partly the damaged portion of the first floor. The net loss assessed to the building by the Surveyor is of the order of Rs. 2,09,492/- as per sanctioned schedule rate of State P.W.D. of 1992. Further rates have been appreciated to bring these rates at par with local market. We do not find any flaw in the report of the Surveyor although the Authorised Representative of the complainant has argued that the sum assured was Rs. 6,10,000/- and, therefore, the valuation should not have been done at Rs. 4,88,000/-. Since the house was 15 years old, the Surveyor was right in assessing the value.

5. THE other point raised by the complainant is that Surveyor Javed Husain is an Electrical Engineer and the loss should have been assessed by the Civil Engineer. We are not in agreement with this plea as Electrical Engineer has substantial knowledge of Civil Engineering and a Civil Engineer is also required to have substantial knowledge of Electrical Engineering. THE point raised by the learned Counsel for the opposite party that the requisite information as required by the Insurance Company was not submitted by the complainant to settle the claim, has no ground to stand in this case. This is a peculiar case and it is known that those who have left the valley cannot quickly collect the information. THE evidence filed by the complainant goes to show that the information as and when required was submitted to the extent possible and that too in as early time as possible in the circumstances. Even the Govt. of India has issued directives to the Insurance Company in regard to the property of the people adversely affected in Kashmir valley to the effect that leniency should be observed by the Insurance Company in those matters. This is evident from Annexure-13 filed by the complainant.

6. IN view of above discussions we come to the conclusion that the complaint is liable to be allowed in part and the complainant is entitled to a claim of Rs. 2,09,442/- along with interest @ 18% p.a. w.e.f. 1.6.1993 till the date of payment. ORDER The complaint is partly allowed and it is directed that opposite party, INsurance Company will pay to the complainant an amount of Rs.

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2,09,442/- along with interest @ 18% p.a. w.e.f. 1.6.1993 till the date of actual payment. The complainant will also be entitled to a cost of Rs. 3,000/- to be paid within the same period. Compliance of this order shall be made within six weeks from the date of this order. Let copy as per rules be made available to the parties. Complaint partly allowed.

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