(2001) 04 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

BHANUMATI SINGH APPELLANT

Vs

National Insurance Company RESPONDENT

Date of Decision : 11-04-2001

Acts Referred:

Citation : 2002 2 CPJ 483 : 2003 1 CLT 61

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

Final Decision : Complaint partly decreed

Judgement

1. THIS complaint has been filed for recovery of Rs. 4,18,047/- as damages and compensation along with future interest till the date of actual payment.

2. THE facts of the case stated in brief are that the complainant, Smt. Bhanumati Singh, is the sole proprietor of M/s. Smriti Gas House which deals with the business of distribution and sale of liquified petroleum gas (LPG) filled cylinders besides other connection items. This agency was given to the complainant after the death of her husband who was an Air Force Officer who died in an air crash. THE complainant carries on the business from its office at 30, Maqbara Road, Lucknow and has got one of her godowns situated at village Bharwara, P.S. Chinhat, Lucknow. The complainant took an ''L.P. Gas Trader''s combined policy'' from National Insurance Company Limited. The insurance risk among others was also against burglary and house breaking for a period from 1.8.1989 to 31.7.1990. A total premium of Rs. 4,591/- was paid by the complainant.

In the night of 20th/21st May, 1990 a theft/burglary was committed in the godown premises of the complainant in which 364 cylinders were stolen including 10 cylinders filled with gas. Some property was also damaged causing loss to the complainant to the extent of Rs. 2,02,763.70. The complainant lodged an F.I.R. on 21.5.1990 at the Police Station Chinhat and also intimated the office of the National Insurance Company at Lucknow. The claim form duly filled up was submitted to the National Insurance Company on 25.5.1990 claiming a sum of Rs. 2,02,763.70. It is further alleged that inspite of several reminders and requests to the Insurance Company, the claim was not settled early. Thereafter the opposite party approved the claim on 11.6.1991 after a lapse of more than a year. A sum of Rs. 1,62,915/- towards the full and final settlement of the claim was approved. A sum of Rs. 5,592/- was also demanded as additional premium in duress which the complainant paid. The complainant did not agree to accept any amount less than this loss which was suffered by the complainant to the tune of Rs. 2,02,763.70. On 2.7.1991 only a sum of Rs. 1,22,186/- was paid by the Insurance Company instead of Rs. 2,02,763.70. The complainant was pressed to accept the same in full and final settlement, but the complainant refused to do so.

3. NOW the complainant has prayed for the difference of Rs. 80,577/-, interest on Rs. 2,02,763.70 from the date of loss, i.e. 21.5.1990 till 2.7.1991 when a sum of Rs. 1,22,186/- was tendered. This interest comes to Rs. 39,538/-. The complainant has further claimed interest on the balance amount of Rs. 80,577/- till filing of the complaint which comes to Rs. 9,669/-. The complainant has also prayed for refund of extra premium paid under mistake amounting to Rs. 5,592/- and interest on the same amount. Loss of business at the rate of Rs. 10,000/- per month, i.e. Rs. 2,00,000/- till the date of filing has also been claimed along with Rs. 25,000/- as loss to reputation with the customers and Indian Oil Corporation. The complainant has also prayed for a sum of Rs. 2,000/- incurred in travelling to and from various offices of the opposite parties. A sum of Rs. 50,000/- has been demanded as compensation towards harrassment and mental tension. Cost of litigation at Rs. 5,000/- has also been claimed. The opposite party, National Insurance Company Limited, in its written version has admitted the insurance and also admitted realization of additional premium of Rs. 5,592/- on the ground that there was a mistake in the calculation of the premium. It is further admitted that the copy of the F.I.R. has also not been submitted to the Insurance Company by the complainant. A final report was accepted by the police and after assessment of the loss, the complainant was tendered a sum of Rs. 1,22,186/- by letter dated 11.6.1991, being 75% of the loss payable in order to overcome her hardships. The complainant willingly accepted the said amount on 2.7.1991 and issued a receipt, copy of which is Annexure 3. The claim of the complainant was settled for a total amount of Rs. 1,62,915/- against which a sum of Rs. 1,22,186/- was paid.

4. THE settlement of the claim was made promptly by the National Insurance Company and wrote three letters to send the discharge voucher for the final payment of the balance 25% of the claim amount but the complainant did not do so. THE copies of those letters are Annexures 4 to 6. It is further alleged that the claim of complainant for a sum of Rs. 2,02,763.70 lodged by the complainant with the opposite party was not justified due to the reason that the Surveyor found at the time of loss the stock of the cylinders at the godown of the complainant was of the value of Rs. 4,61,318/- and the sum insured for this purpose was only Rs. 3,74,400/-, and as such there was an under-insurance to the extent of Rs. 86,981/-. According to the National Insurance Company the average clause was applied and the claim amount comes to Rs. 1,62,915/- which

has been settled by the opposite party. THEre is no deficiency in service on behalf of the Insurance Company. The parties lead evidence in support of their respective contentions and perused the evidence on record. We have also heard the Counsel for the parties. The only question which arises for consideration in this case is whether the insurance amount was to the tune of Rs. 5,24,400/- on account of the theft and burglary or it was for Rs. 3,74,400/-. If the insurance was for Rs. 5,24,400/- then the entire claim of the complainant is covered under the policy as the stock which was found was less than the amount. In order to prove that the insurance of the complainant was only for Rs. 3,24,400/- only for cylinders, hot plates, accessories and allied items, kept in the godown, the Insurance Company has filed copy of the policy which is Annexure-1. It is dated 27.7.1988 and is effective till 26.7.1989. This is not the policy which was taken for the year in which the theft was committed, because the policy which was taken for the year in which the theft was committed was effective from 1.8.1989 to 31st July, 1990. This policy was for the previous year. Therefore, it has no relevance in the present case and the entries in it show that the goods kept in the godown were insured for Rs. 3,24,400/- would be accepted. The policy in question which relates to the year in dispute is Annexure S3. It starts from 1st August, 1989 to 31st July, 1990. It shows that the insurance was for a sum of Rs. 5,74,400/-. This amount represents the stock of LPG cylinders, hot plates, allied items etc. which amount is split into two parts of Rs. 3,74,400/- and Rs. 1,50,000/-. There are other smaller amounts also shown in this policy for Niralanagar and Maqbara Road, Lucknow. Thus the stock in the godown was insured for a sum of Rs. 5,24,400/-. According to the report of the Surveyor dated 25.9.1990 there were 496 empty cylinders worth Rs. 2,72,800/-, filled cylinders worth Rs. 1,88,581/-, the total of the amount was Rs. 4,61,381/-. Thus this amount is well below the amount of Rs. 5,24,400/- for which the insurance of the stock was done. It is wrong to say that the insurance of cylinders in the godown at Chinhat was only of a sum of Rs. 3,74,400/-. Thereafter it cannot be said that the insurance of the goods in the godown at Chinhat was only for Rs. 3,74,400/-. Therefore, there was not any insurance as has been reported by the Surveyor. Therefore, the Insurance Company is liable to pay the entire amount which the complainant has suffered as loss. The complainant has mentioned the loss which he has suffered as Rs. 2,02,763/-. Thus the complainant shall be entitled to claim the entire amount for which the insurance was done. The Insurance Company was not justified in paying a total sum of Rs. 1,22,186/- only after applying the average clause. There was no case of application of average clause. The complainant has successfully proved its loss at Rs. 2,02,763.70. As the complainant has received a sum of Rs. 1,22,186/-, therefore, the complainant is entitled to claim the rest of the amount as mentioned in the complaint on account of the loss caused on account of the theft. The complainant is, therefore, entitled to a further sum of Rs. 80,577/-.

5. THE complainant has claimed a sum of Rs. 39,538/- as interest from 21.5.1990 to 2.7.1991 on a sum of Rs. 2,02,763.70. In our opinion the

complainant has rightly claimed the interest because the complainant was deprived of this amount by the Insurance Company without any justifiable reason. Similarly the complainant is also entitled to claim interest of Rs. 9,669/- on Rs. 80,577/- till the filing of complaint.

6. THE complainant has failed to prove that the premium of Rs. 5,592/- has been wrongly realized from her. THE Insurance Company has given calculations of the amount of premium which has been later on charged and we do not find any reason to differ from the above calculation in view of the fact that there is no rebuttal of this calculation which was advanced during the course of arguments. The complainant has also claimed a sum of Rs. 10,000/- per month as loss to the business from Nirala Nagar premises. The complainant has not led any evidence which might go to show that the complainant has suffered that much loss. In the similar way the complainant also failed to prove the loss of Rs. 25,000/- which is alleged to be the loss of reputation with the customers and Indian Oil Corporation.

The complainant has claimed a sum of Rs. 2,000/- on account of travelling expenses for going to the various offices of the respondents. We find that a sum of Rs. 2,000/- is a reasonable amount and is being allowed. The complainant has further claimed a sum of Rs. 50,000/- on account of mental torture etc. Under this head a sum of Rs. 5,000/- will be sufficient. The complainant has also claimed damages for future interest on the amount of Rs. 80,577/- from the date of filing of complaint till the date of payment at the rate of 18% per annum. We find that the complainant is entitled to this amount besides cost of Rs. 3,000/-. Thus the complaint is liable to be allowed in part. ORDER

7. THE complaint is decreed partly and the complainant is entitled to get a sum of Rs. 80,577/- as the difference of the amount which has been claimed and which has not been paid by the opposite party. THE complainant is also entitled to get Rs. 2,000/- towards travelling expenses from the opposite party. We also direct the opposite party to pay a sum of Rs. 5,000/- to the complainant as damages towards mental tension, harassment etc. THE complainant shall also get a sum of Rs. 3,000/- as cost of this complaint. THE complainant shall also be entitled to get interest at the rate of 18% per annum on the difference amount of Rs. 80,577/- from the date of filing of complaint till the date of payment. Let compliance of the order be made within a period of two months from today. Let copy as per rules be made available to the parties. Complaint partly decreed.