(1992) 09 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

BIZI INDUSTRIES APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 07-09-1992

Acts Referred:

Citation : 1992 2 CPR 462 : 1995 3 CPJ 380

Hon'ble Judges : S.C.Mohapatra , R.N.Panigrahi , J.Patnaik J.

Final Decision : Complaint allowed

Judgement

1. DEFICIENCY in banking service by opposite parties 1 and 2 and insurance service by opposite party No. 3 are the grievances of the complainant which is a proprietory concern.

2. COMPLAINANT carries on business in steel fabrication, furnitures and sheet materials. It took loan in Cash Credit Account against which raw material, etc. of the complainant stood hypothecated and pledged to the State Bank of India. Some of the stocks and raw materials were under lock and key hypothecation and some others were lying in the open manufacturing shed. These materials which were in the lock and key godown were insured against theft, fire, etc. with opposite party No. 3 by the State Bank of India. In 1989, materials worth Rs. 2,20,000/- were stored in the lock and key godown. On or about 10/ 11.12.1989 there was theft/burglary committed in the lock and key godown. On 11.12.1989 in the morning complainant found the locks broken and the articles stolen. First Information Report was lodged by him in Madhupatna Police Station on 11.12.1989 and on being informed; State Bank of India took physical inventory on 12.12.1989. On inventory it was found that articles worth Rs. 1,64,471/- were stolen. State Bank has lodged a claim with the insurer for an amount of 1.64 lakhs. Madhupatna Police Station has charge-sheeted the accused persons on 28.2.1990. Inspite of it, opposite parties 1 to 3 are not settling the claim for which complainant has suffered loss of about five lakhs and has filed this complaint alleging deficiency in service. In the case stated by opposite parties 1 and 2, the cash credit (lock and key) limit was Rs. 2,00,000/- out of which goods

worth 15 lakhs were to be in the lock and key godown. Insurance was made with opposite party No. 3. On receipt of intimation of theft on 12.12.1989 godown-keeper made physical inventory of the stock and prepared a list of the stock found. On the same day, letter was sent to the insurer-opposite party No. 3. On 14.12.1989 claim was made which fact was intimated to complainant on 19.12.1989. On 20th December, complainant intimated that some other articles had been stolen on receipt of which on 2.1.1990, insurer was intimated to include the said items. Defect having been found in policy, correspondences have been made with ''the insurer to correct the policy. Thus, all steps have been diligently by the Bank.

Insurer (opposite party No. 3) has. stated its case. that the chance of theft was between 27.4.1989 and 1.12.1989 whereas the insurance policy covers a period between 20th August, 1989 and 19.8.1990. The loss therefore, occurred before the period covered under the policy. Insured has not taken reasonable care as per the condition No. 3 of the policy and the stock kept in the godown being of eight years'' old creates suspicion about the utility or their existence. Entire thing has been manufactured and concocted to derive monetary benefit from the insurer. Insurer has requested the Banker as well as complainant to furnish police papers, bank accounts and details of statement and the steps taken by the Bank. But, they have turned their deaf ear and ultimately with a view to deriving monetary benefit. Complainant not being insured and opposite party No. 2 having been insured, claim at the instance of complainant is not maintainable. There is neither any negligence nor any deficiency in service and the claim having been duly repudiated, complaint is not maintainable.

3. FIRST question for consideration is, whether the complainant is a consumer to maintain this complainant. It is true that the Bank is the insured. However, the policy is in respect of the goods of complainant on his account. Bank has disclosed that premium had been paid by it and had been adjusted to the account of complainant as per the agreement Even if on strict instruction of the policy, complainant is not treated as the insured, there can be no doubt that it is the beneficiary of the insurance service with approval of the Bank which is the insured and the Bank has hired the services of the insurer by payment of premium. Thus, under definition of ''consumer'' in respect of insurance service, complainant is a consumer being beneficiary of the service with approval of the consumer who has hired the service. He is therefore, entitles to file a complaint as provided under Section 12 of the Act. Although insurer has doubted the period during which there was theft. Bank which is a statutory body and is a public banking organisation, has been satisfied that there has been theft, as alleged, on 10/11.12.1989. There was no doubt about the genuineness of the theft as at any stage. In case the insurer was of the opinion that servants of complainant are involved in the theft, the fact could have been brought to the notice of complainant earlier to the repudiation. No document has been brought to our notice to indicate that this suspicion was confronted to complainant at any stage or even intimated to the Bank which is insured. The Surveyor''s report dated

13.12.1989 indicates that he advised to admit the claim for settlement without any prejudice. Much after receipt of the copy of this complaint on 19.2.1992 letter dated 31.3.1992 was addressed to the Branch Manager of State Bank of India with a copy to complainant repudiating the claim which reads as follows: - "Kindly refer to our letter No. 34003/44/ 7/002/89 dated 12.3.92 on the captioned subject. You have neither submitted the required papers nor replied to our above letter. However, it is learnt from the Survey report that the alleged stock is of more than 8 years old and the employee is involved in the theft/ burglary. Since this is excluded under the policy, we hereby repudiate our liability from the claim."

4. MORE than two years to repudiate a claim itself is a deficiency in service in absence of clear materials that the insurer was taking regular steps from the date of the claim till its repudiation. It is true that in the letter repudiating the claim it is stated that employee is involved in the theft/burglary. The person involved, however, is an employee of complainant and not of the insured. Thus, the ground of repudiation cannot be said to be reasonable. The second ground of repudiation is that the stock is of more than 8 years old. No clause in the policy has been brought to our notice that the stock should be within a specified period. Therefore, the said ground is also not reasonable. Third ground is that the required papers were not submitted and no reply to the letter had been given. If the papers were not submitted, insurer could have itself collected the same. They are not secret documents or only in custody of complainant or the Bank. A copy of the letter calling for the documents is dated 12.3.1992 which indicates that various correspondence/ letter and telephonic conversation have been referred to. Details have not been indicated either in the said letter or in the case stated to us. It is seen that only on 23.11.1990, Mr. Ramachandra Ray, Investigator, was required to investigate into the claim. There is no explanation why it took one year to appoint that Investigator. On 5.10.1990, the Branch Manager was called upon after discussion on 3.9.1990 to comply with the following: (i) Final Police reports, (ii) Banker''s Accounts and Statement, and (iii) Details of action taken by the Bank so far.

Thereafter came letter dated 12.3.1992. In case, the grounds for repudiation of the claim would have been reasonable, we would not have entertained this complaint as there would have been no deficiency in service. The grounds appear to be unreasonable. However, before taking any serious view in the matter, we would call upon the insurer to have a tri-partite conference of complainant, banker and its officers, within three months from today and finally settle the claim either admitting the amount of loss or repudiating the claim; wholly or in part not insisting upon the fact that the claim has been repudiated, since we have come to the finding that the repudiation is unreasonable. Complainant is given the liberty to approach any redressal agency as advised thereafter. At this stage, we award no compensation. In result, complaint is allowed to the extent indicated above. Dr. R.N. Panigrahi, Member-I agree. Smt. J. Patnaik, Member-I agree. Complaint allowed.

