(1996) 10 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

CAMELLIA PACKAGES (PVT.)LTD APPELLANT

Vs

ORIENTAL INSURANCE Company RESPONDENT

Date of Decision : 03-10-1996

Acts Referred:

Citation : 1996 3 CPJ 281 : 1997 1 CLT 592 : 1997 1 CPC 20

Hon'ble Judges : J.B.Garg , Sada Nand , P.Ojha J.

Final Decision : Complaint allowed with costs

Judgement

1. THE complainants had been running its business of corrugated boxes, sheets etc. since 1989 at premises 76, Industrial Area, Phase II, Chandigarh. THE premises were got insured according to the Policy No. 151877 dated 24.2.92 for Rs. 7.50 lacs for raw material, finished, semi-finished goods etc. and Policy No. 151887 dated 16.3.92 in the sum of Rs. 5.56 lacs for machines, office furniture, fixtures, Typewriters. T.V. etc. On 24.4.92 a fire broke out at the premises of the complainant and the entire raw material, finished goods, fittings even machinery, fixtures and furnitures were reduced to ashes. THE occurrence was reported to the Insurance Company Respondent No. 1 on the following working day i.e. 27.4.92. THE required information was also communicated to the Andhra Bank and Delhi Financial Corporation on 27.4.92 from which sources the complainant had obtained loans in respect of first policy. THE claim for Rs. 9.50 lacs was made and in respect of the second policy the claim for Rs. 2.33 lacs was made. THE respondent Insurance Company took about nine months for approval of the first claim against Policy No. 151877 and only a sum of Rs. 4,22.565.00 was sanctioned and in respect of the second policy no compensation has been offered. THE respondent did not settle the claim within the stipulated period of three months except a sum of Rs. 4,22,565.00 against the claim of Rs. 9.50 lacs, against Policy No. 151877. THE claim made by the complainant is briefly described as under : (i) Even after the average clause a sum of Rs. 4,22,565/- was inadequate and the amount still deemed outstanding; Rs. 1,12.000.00 (ii) Claim in respect of second policy dated 16.3.92; Rs. 2,33,000.00 (iii) Loss on account of delay in not clearing the claim within the stipulated period; Rs.

1,00,000.00 (iv) THE amount which the complainant spent in raising funds from other sources; Rs. 50,000.00 (v) Damages on account of loss of reputation; Rs. 1,50.000.00 (vi) Loss of business which resulted closing down of the unit as assessed; Rs. 3.00,000.00 (vii) Loss on account of harassment and heart ailment suffered by the complainant Rs. 50.000.00 Thus the total sum of Rs. 9.95 lacs has been claimed.

2. IN the reply filed on behalf of the respondent the occurrence of fire is not disputed. However it has been denied that the entire machinery, raw material, finished goods, fittings, fixtures and furntiure was wholly reduced to ashes. According to the report of Loss Assessor, Lt. Col. R.K. Sehgal (Retd), the loss assessed was Rs. 5,13,418.42. There is a letter in the hand of the complainant wherein the loss was considered and settlement was arrived at a sum of Rs. 5,13,418.42 and this is Annexure R-A. It shall be useful to reproduce this hand-written letter which is as under : "Camellia Packages Pvt. Ltd. 76, INdustrial Area, Phase II, Chandigarh Refdated . Consent Letter We herewith agree to accept a sum of Rs. 5,13,418.42 as full and final settlement towards loss and damage to our stock of raw material/ semi-finished goods, Plant and machinery which had happened due to a devastating fire which had engulfed our works on the night 24th Aprill, 1992. This concerned letter is issued without prejudice subject to the insurer''s admitting liability and other terms and conditions. Camellia Packages Pvt. Ltd. Sd/- Managing Director".

There is a receipt Annexure R-2 which shows that a sum of Rs. 4,22,565/- has been received by the complainant and a kind of discharge certificate was issued on 17.12.92. On behalf of the respondent it has been pointed that once the sum of Rs. 4,22,565/- was received by means of a cheque issued by the respondent on 17.12.92 and it has been enchased, it should be deemed that the claim of the complainant has been fully satisfied. In the case of the complainant there were two policies one was for Rs. 7.50 lacs dated 24.2.92 and the second was for Rs. 5.56 lacs dated 16.3.92. The respondent has paid only a sum of Rs. 4,22,565/- whereas even if the consent letter Annexure R-A on which the respondent has relied upon is to be taken into consideration as a whole the respondent was required to pay the sum of Rs. 5,13,418.42 and not merely Rs. 4,22,565.00. The plea raised on behalf of the respondent as regard the second policy its liability was only 50% and that the respondent was liable to pay only a sum of Rs. 40,576 /- being 50% because the premises were also insured with another Insurance Company known as New India Assurance Company has no merit in view of the settlement arrived at through Annexure R-A.

We are of the view that after perusal of the report of Lt. Col. R.K. Sehgal (Retd.) who assessed the total loss at a sum of Rs. 5,13,418.42, there was no justification for paying only a sum of Rs. 4,22,565.00 when the respondent agreed to accept the sum of Rs. 5,13,418.42 as a whole as contained in Annexure R-A relied upon by the respondent themselves. The learned Counsel for the respondents has referred to M/s. New India Assurance Co. Ltd. v. M/s.

Matchless Investment Finance & Leasing Ltd., II (1996) CPJ 201 (NC)=1996 (2) CPR 81. wherein agreed amount of compensation was given considerable importance. Here the consent letter Annexure R-A refers to the amount which was acceptable to the complainant and not that the respondent was competent to reduce it further.

3. AS regards the second Insurance Policy No. 151887 which was effective from 22.3.92 to 21.3.93 since the occurrence took place later on 24.4.92, the complainant was entitled to the entire loss from the respondent Insurance Com pany and not merely 50% and the loss assessed was Rs. 81,153.00 as admitted in para No. 7 of the reply dated 1.6.94. The complainant is entitled to recover this loss in its entirety from the respondent because he had been pressing the claim qua the main policy and the consent letter Annexure R-A has been relied upon by the respondents. The conclusion is that the respondents are liable to pay the sum of Rs. 81,153.00 to the complainants together with interest @ 18% p.a. with effect from 18.12.93. Since the case of the complainant is that he has not recovered any amount in respect of the second policy from any other Insurance Company and the second insurance was got cancelled, the complainant is required to furnish an affidavit specifying that he has not received any compensation in respect of the aforesaid loss from any other Insurance Company. The complainants are also entitled to costs of the proceedings which are assessed at Rs. 2,000/-. Announced. The order be communicated to the parties free of charges. Complaint allowed with costs.

