(2013) 04 NCDRC CK 0103

In the National Consumer Disputes Redressal Commission

CHAIRMAN AND MANAGING DIRECTOR , Regional Manager Oriental Insurance Co. Ltd. Regional Office, Begumpet Sbehlatnha Complex Hyderabad	APPELLANT
Vs	
M/S Balaji Cotton Traders	RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : 2013 0 NCDRC 244 : 2013 2 CPJ 371

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : Appeals stand disposed of

Judgement

1. TWO cross-appeals, namely, First Appeals No. 389 of 2007 and 520 of 2007, have been filed by Oriental Insurance Company Limited and M/s Balaji Cotton Traders, Opposite Party and Complainant respectively before the A.P. State Consumer Disputes Redressal Commission, Hyderabad (hereinafter referred to as the State Commission) challenging the order dated 23.03.2007 of that Commission.

2. SINCE the facts and the parties in both first appeals are common/similar arising out of the same consumer dispute, it is proposed to dispose of these appeals by one common order by taking the facts from First Appeal No. 389 of 2007. The parties will be referred to in the manner in which they were referred to in the complaint i.e. M/s Balaji Cotton Traders will be referred to as "Complainant " and the Oriental Insurance Company Limited as "Opposite Party ". The facts as stated in the complaint before the State Commission are that the Complainant had been carrying on the business of Pressed Cotton Trading in the name and style of M/s Sri Balaji Cotton Traders after changing its earlier name of Balaji Cotton Traders and after informing the various authorities as statutorily required, including Opposite Party. It had insured its stocks of cotton and cotton products by obtaining two insurance policies from the Opposite Party for Rs.50,50,000/- vide Policy Nos. 432303/2002/148 and 432303/2002/431 dated 27.06.2001 to cover building and stocks of cotton in all forms located at various

specified premises i.e. at M/s Balaji Cotton Traders, Pulladigunta; M/s Sri Srinivasa Pressing Company Pvt. Ltd., Kuruntala; and M/s Sri Lakshmi Pressing & Ginning Mill, Karuntala, Guntur District against the risks of fire lightening, riot, strike and malicious damage, explosion, flood, cyclone etc. for a period of one year i.e. upto 26.06.2002. On 08.05.2002 due to a fire accident in one of the insured premises the cotton stocks under pressing stored in gunny bags and finished cotton stocks packed in fully pressed bales belonging to the Complainant were totally gutted besides the stocks of several other cotton dealers, which were also lying there. Reports were lodged with the Police and the Electricity Department and a certificate from the Fire Services Department confirmed the fire. Complainant also informed the Opposite Party about the incident and submitted a claim. Opposite Party appointed an Investigator-M/s Sisir & Ravi Associates, Vishakhapatnam, who visited the site on 09.05.2002 i.e. one day after the fire for assessing the loss and subsequently a joint inspection was also carried out alongwith another Surveyor M/s Srivatsan Surveyors Pvt. Ltd. appointed by the Opposite Party. After a span of 9 months, the Surveyor sought some clarifications which were answered by the Complainant vide letter dated 06.03.2003. After several reminders to the Opposite Party for early settlement of the claim, Opposite Party vide their letter dated 25.07.2003 repudiated Complainant ''s claim inter alia on the ground that though the policy was issued in the name of Balaji Cotton Traders, its name was changed to Sri Balaji Cotton Traders without informing the Opposite Party. Therefore, since the affected stocks belonged to M/s Sri Balaji Cotton Traders and not to the policy holder i.e. Balaji Cotton Traders, no insurable interest vested with the Complainant. Being aggrieved by this action and since Complainant had duly informed the Opposite Party as also other authorities about the change in the name of the firm, Complainant approached the State Commission on grounds of deficiency in service and unfair trade practice and requested that the Opposite Party be directed to pay the Complainant a sum of Rs.30,10,000/- towards the insurance claim together with interest at the rate of 12% per annum from 08.05.2002 as also Rs.50,000/- towards mental agony suffered by the Complainant due to negligence and deficiency in service on the part of Opposite Party.

3. OPPOSITE Party on being served filed a written rejoinder, in which it was denied that they were intimated regarding the change in the name of the company. The letter dated 26.02.2002 was fabricated by Complainant to support the false claim. Further, the fire which took place at M/s Sriniwasa Pressing Company Pvt. Ltd., Kurunthala was not insured under the insurance policy since the premises insured was M/s Sriniwasa Pressing Factory (and not Company), Kurunthala. The Surveyor ''s report also indicated that there were many discrepancies and inconsistencies in the stock position vis-a-vis the stock register and Complainant also did not fully cooperate with the Surveyors and avoided to produce certain documents which were required to settle the claim.

4. THE State Commission after hearing the parties and on the basis of evidence produced before it partly allowed the complaint by inter alia observing as

follows : "The insured is also a registered dealer under APGST and CST and it is also not in dispute that the accident occurred in Sri Srinivasa Pressing Co. Pvt. Ltd., and the cause of accident is also not in dispute. The technical objection of the opposite parties is that they were not informed of the change of the name from M/s Balaji Cotton Traders to Sri Balaji Cotton Traders though there is a letter addressed by the complainant to the opposite party on 26-2-2002 which bears the stamp of the opposite party. Therefore, we are of the considered opinion that there is no force in this contention taking into consideration that the insured is also registered under APGST and CST Acts as a dealer and is managed by the same proprietor and has been insured with the insurance company since the last 8 years. Therefore, we hold that the record shows that M/s Balaji Cotton Traders was changed to Sri Balaji Cotton Traders with effect from 18-2-2002 and the proprietor is the same for both the companies. "

Regarding the contention of the Opposite Party that the fire incident took place at M/s Srinivasa Pressing Company Pvt. Ltd., which was not covered under the policy and only Sri Srinivasa Pressing Factory, Kurunthala was covered under the policy, the State Commission observed that the repudiation on this ground was also unsustainable since the Opposite Party could not produce any substantial documentary evidence to prove their contention that M/s Srinivasa Pressing Company Pvt. Ltd. is different from Sri Srinivasa Pressing Factory while on the other hand the Surveyor in his report has not disputed that the fire took place in the insured premises. Regarding the quantum of loss, the State Commission concluded through its detailed order that the actual value of the goods lost in the fire was Rs.20,98,952/- (and not Rs.10,24,606/- as assessed by the Surveyor) and, therefore, directed the Opposite Party to indemnify the claim for this amount with interest @ 6% per annum from the date of repudiation i.e. 25.07.2003 till the date of realization together with cost of Rs.5000/- within a period of six weeks, failing which the said amount would carry interest @ 9% per annum thereafter. Aggrieved by this order, Opposite Party has filed First Appeal No. 389 of 2007. Complainant has also filed First Appeal No. 520 of 2007 against this order on the ground that the report of the Surveyor assessing the loss based on the APCOT news letter dated 11.05.2002 was much less than the market price of various items of cotton stored in the premises, the valuation of which had been accepted by the Surveyor in his report. Further, the interest of 6% awarded by the State Commission is less and in violation of IRDA Regulations, orders of this Commission as also Hon ''ble Supreme Court of India. Hence, the request for increase of the awarded amount from Rs.20,98,952/- to Rs.30,10,000/- with enhanced interest.

5. LEARNED Counsels for both parties made oral submissions.

6. LEARNED Counsel for Opposite Party essentially reiterated the facts as stated by them in the written rejoinder filed before the State Commission. It was again pointed out that there was no insurable interest between the parties since the name of the company as also where the fire took place were different from those

mentioned in the insurance policy. Counsel for Opposite Party stated that vide their letter dated 08.05.2002 Opposite Party had communicated to the Complainant that the proposed change of the name of their company was not approved in terms of the insurance coverage. Counsel for Opposite Party also sought to challenge the veracity of the certificate of registration of the Sales Tax Department on the ground that it pertained to the year 1997-98 whereas the name was actually changed in 2002 and further there was no signature of any authority/officer of Sales Tax Department on this document. Since an insurance policy has to be construed strictly in terms of what has been stated in it, the State Commission erred in accepting the Complainant ''s contention and directing the Opposite Party to indemnify the claim. Counsel for Complainant on the other hand stated that the Opposite Party was informed about the change of the name vide letter dated 26.02.2002 and the seal of the Opposite Party on it was proof that it had been received and noted by them. Regarding the certificate of registration, which was filed in evidence, Counsel for the Complainant states that the intimation regarding change of name was done on 10.02.2002 and this is confirmed by the signature of the Assistant Commercial Tax Officer on that document also dated 10.02.2002. This change was given retrospective effect from 1997. Opposite Party ''s own Surveyor had also not challenged this certificate in his detailed survey report. The letter from the Opposite Party communicating to the Complainant that the change in the name was not approved was dated 08.05.2002 i.e. after the fire had taken place and in order to justify the repudiation of the claim and, therefore, it is of little help to the Opposite Party to prove their case. So far as the insured premises is concerned, the report of the Surveyor as also affidavits filed by the Auditor and other authorities clearly confirmed that the fire incident took place in the insured premises and, therefore, the State Commission had rightly concluded that the contention of the Opposite Party that the premises was not insured was not sustainable.

7. REGARDING the quantum of monetary loss, Counsel for the Complainant through First Appeal No. 520 of 2007 challenged the assessment made by the Surveyor based on the First-in-and-First-out (FIFO) method and taking the price of cotton stocks from the APCOT news letter dated 11.05.2002 by pointing out that the Surveyor himself had recorded a finding that 6 different varieties of cotton were stocked at the time of fire incident and the market price of these varieties was as under :- "Variety Rate/Qtl.Rs. Mech-1 (28mm) 4,218 Brahmma (29mm) 4,499 Bunny (30mm) 4,781 MCU-5 (31mm) 5,062 MCU-5 (32mm) 5,343 MCU-5 (33mm) 5,624 "

The average cost of this amount comes to Rs.4921/- per quintal and not Rs.3241/- per quintal as concluded by the Surveyor. Under the circumstances, the Complainant is entitled to the following claims : "Bales 50 x 188 Kg = 9400 Kg. x 45.20 = Rs.4,24,880-00 Boras 354x170 Kg = 60180 Kg. x45.20 = Rs.27,20,136-00 4% Commercial Tax 31,45,016-00 1,25,800-00 32,70816-00 "

Counsel for the Complainant further stated that interest of 6% on the awarded amount was too small and the National Commission vide its order dated 06.08.2007 while staying execution of the impugned order had directed that the amount deposited by the Opposite Party of Rs.10,24,606/- as assessed by the Surveyor would carry interest @ 10% per annum and that it would be open to the Complainant to withdraw this amount by executing a personal bond. Therefore, interest of 10% on the actual claim amount of Rs.30,10,000/- sought by Complainant was justified.

8. COUNSEL for the Opposite Party on the other hand stated that the Surveyor in his detailed report relying on the price of cotton as indicated in the APCOT news letter and by using the FIFO method i.e. the method that assumes that inventory purchased first is sold first, had rightly worked out the average rate per quintal as Rs.3241/- and assessed the net loss as Rs.10,24,606/-. The Complainant has not been able to provide any records or documents to substantiate his contention pertaining to the total loss claimed by him. We have heard learned Counsel for both parties and have carefully considered the evidence on record. So far as First Appeal No. 389 of 2007 filed by the Opposite Party is concerned, we agree with the finding of the State Commission that as per the evidence on record it is established that the Complainant had informed the Opposite Party as also other statutory authorities about the slight change in the name of the insured business by adding ''Sri '' to the existing nomenclature Balaji Cotton Traders. This fact is confirmed by the letter sent to the Opposite Party on 06.02.2002 which bears the stamp of the Opposite Party as having been received. Further, the certificate of registration issued by the Commercial Tax Department dated 10.02.2002 also confirms that the change of the name had been intimated and duly incorporated in their register. Thus, the State Commission had rightly concluded that it was the insured company which had suffered the loss. We also agree with the finding of the State Commission that the premises where the fire took place and where the stocks were destroyed was insured as per the insurance policy. This fact has not been disputed by the Surveyor who had investigated the incident and has been fortified by the affidavits filed by the Auditor and the management to confirm the same. On the other hand, the Opposite Party has not been able to produce any documentary or other evidence to prove their contention that Sri Sriniwasa Pressing Factory, Kurunthala is not the same premises as Sri Sriniwasa Pressing Company Pvt. Ltd., Kurunthala.

9. REGARDING First Appeal No. 520 of 2007 filed by the Complainant pertaining to the valuation of the stocks lost in the fire, we note that the Surveyor had relied on the prices of cotton stocks of different varieties as quoted in the APCOT news letter dated 11.05.2002 and using the FIFO method had assessed the loss. On the other hand, in its survey report under the heading ''Valuation '' the Surveyor has confirmed that 6 varieties of cotton were stocked at the time of the fire incident and the market price of these varieties ranged from Rs.4218/- to Rs.5624/- per quintal. Under these circumstances, a more acceptable method of assessing the value of stocks lost in the fire would have been by working out the

loss on the basis of the lowest market price of the cotton stock in the premises i.e. at Rs.4218/- per quintal instead of assessing it on a theoretical basis by relying on generic rates and applying the FIFO method without any evidence.

10. REGARDING the actual quantity of the stocks destroyed, the Complainant had contended that 50 Bales and 340 Boras were destroyed, which comes to 542.80 quintals. Surveyor had deleted 210 Boras from this quantity. The State Commission had considered this issue and concluded that neither the Opposite Party nor the Surveyor were able to substantiate with any credible proof the reason for this deduction and, therefore, the State Commission had concluded that it should have been included in the loss. We have gone through the report of the Surveyor as also the evidence on record and we agree with the finding of the State Commission that the total number of Bales and Boras destroyed in the fire were 50 and 340 respectively and there was no justification for the Surveyor deducting 210 Boras. Keeping in view the above facts, the loss assessed by the State Commission needs to be partly modified and worked out at Rs.4218/- per quintal for 542.80 quintals, which were destroyed in the fire. In this way, the value of the insured stocks lost in the fire would be Rs.22,89,530/- (i.e. 542.80 quintals x Rs.4218/- per quintal). After adding Rs.91,581/- on account of 4% purchase VAT and after deducting the salvage amount of Rs.500/- as also Rs.10,000/- on account of policy excess, the net payable amount comes to Rs.23,70,611/-. Regarding the interest to be levied on this amount, we find substance in the Complainant ''s contention that interest @ 6% per annum as ordered by the State Commission is on the lower side and interest @ 9% per annum usually awarded by us in such cases is both reasonable and justified. 15. To sum up, we dismiss First Appeal No. 389 of 2007 filed by the Opposite Party. Regarding First Appeal No. 520 of 2007 filed by the Complainant, in partial modification of the order of the State Commission and for the reasons stated in Paras 12 to 14 of this order, we hold that Opposite Party is liable to pay the Complainant a sum of Rs.23,70,611/- with interest @ 9% per annum from the date of repudiation of the claim i.e. from 25.07.2003 till the date of realization together with costs of Rs.5000/-.

11. WE note that in terms of order dated 06.08.2007 of this Commission the Opposite Party has already deposited a sum of Rs.10,24,606/- i.e. the loss assessed by the Surveyor with interest @ 10% with this Commission. This amount alongwith accrued interest be released in favour of the Complainant. Opposite Party is, therefore, directed to pay the balance amount with 9% interest per annum to the Complainant within a period of 8 weeks in full and final settlement of the insurance claim.

12. BOTH First Appeals stand disposed of on the above terms.

