(2007) 04 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

Chandigarh Petro Foam Pvt. Ltd. APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 17-04-2007

Acts Referred:

Citation : 2007 4 CPJ 197

Hon'ble Judges : K.C.Gupta , MajGenS.P.Kapoor , Devinderjit Dhatt J.

Advocate : I.D.Singla , Vinod Chaudhary

Judgement

1. BRIEFLY stated the facts are that complainant is a company registered under Companies Act and Sh. Sanjeev Goel is Managing Director of said company and is authorised by the Board of Directors to file the present complaint.

2. IT was averred that complainant got building, machinery, finished goods and raw material insured through different policies from opposite parties and the photocopies of policies collectively are Annexure C-1. It was further averred that due to ill luck, a big fire broke out on the night intervening 29/30.8.2002 in the factory premises resulting in extensive damage to finished goods, raw material, building and machinery. Accordingly FIR dated 6.9.2002 was lodged, whose copy is Annexure C-2. The copy of fire report dated 30.8.2002 is Annexure C-3.

It was next averred that after examining the loss, complainant filed claim statement before opposite parties to the tune of Rs. 80 lacs and the copy of claim dated 20.9.2002 is Annexure C-4. Accordingly M/s. R.K. Singhal & Company Pvt. Ltd. was appointed as Surveyor who examined the damage caused by fire and submitted its report and allowed compensation of Rs. 54.05 lacs and did not make payment of the balance amount of Rs. 25.95 lacs. Complainant issued registered notice to opposite parties demanding balance amount to the tune of Rs. 25.95 lacs and the copy of the notice dated 29.1.2003 is Annexure C-6.

3. ALLEGING deficiency in service, the complaint was filed. Opposite parties contested the complaint and filed written reply by way of affidavit of Sh. J.S.

Khera, Asstt. Manager, United India Insurance Company. They stated that the complainant had no locus standi to file the complaint as it had accepted a sum of Rs. 54.05 lacs in full and final settlement of the claim and as such there was no deficiency on their part. They further stated that the claim was settled in full and final settlement of claim by taking into consideration survey report, whose copy is Annexure R-1. They also stated that the complainant was an industrial organisation and it was difficult to believe that the director had signed blank papers and awarding of compensation was left to the discretion of opposite parties. It was further stated that there was no law for reopening the claim once it had been settled strictly in accordance with law. So, they prayed that the complaint should be dismissed.

4. PARTIES adduced their evidence by way of affidavits. We have heard Counsel for complainant Mr. I.D. Singla, Counsel for opposite parties Mr. Vinod Choudhary and carefully gone through the file. It is an admitted fact that complainant had received an amount of Rs. 54.05 lacs from opposite parties as compensation in full and final settlement of the claim. The only allegation is that the consent was obtained under pressure and the same was not binding upon the complainant and the amount of compensation from Rs. 80 lacs to Rs. 54.05 lacs had been reduced drastically without any reason. Complainant had claimed Rs. 25.95 lacs more. The copy of the Surveyor report Annexure R-1 dated 8.10.2002 given by R.K. Singhal & Company Pvt. Ltd. has been placed on file. According to it, the Surveyor had assessed total loss to the tune of Rs. 57,25,208 but since, complainant had agreed to the amount of Rs. 54.05 lacs in full and final settlement of claim, so, opposite parties paid the said amount by cheque dated 23.12.2002.

5. COUNSEL for complainant contended that due to fire, complainant had lost everything i.e. machinery, building and raw material had been reduced to ash and complainant was in dire need of money to restart its business and as such under pressure it had consented to the acceptance of Rs. 54.05 lacs as compensation, although it was not accepted by it voluntarily.

6. COMPLAINANT had issued notice through its Counsel Annexure C-6 dated 29.1.2003 to opposite parties asking them to pay Rs. 29.95 lacs more as complainant had consented to an amount of Rs. 54.05 lacs as compensation under pressure and the same did not bind it. Admittedly complainant had received Rs. 54.05 lacs vide cheque dated 23.12.2002, although it was wrongly mentioned in para-18 of the complaint that it received the cheque on 29/30.8.2002 i.e. present notice was given after about 37 days i.e. more than one month. It is not the case that immediately after receiving the cheque, complainant had got issued a notice or letter of protest. The conduct of complainant becomes relevant to find whether discharge voucher was given voluntarily in full and final settlement of the claim or it was coerced into. It is true that sometimes a person may be compelled to give valid discharge voucher accepting the amount in full and final settlement unwillingly or involuntarily

because insurance company would not release the amount unless discharge voucher in full and final settlement without protest is given by the insured. In that situation, the insured may have no option but to accept the amount due to financial constraints or other compelled reasons. The insured may lodge protest immediately on receipt of amount or soon thereafter but in the present case complainant took more than one month in lodging a formal protest. It shows that complainant had accepted the amount in full and final settlement of the claim voluntarily but after a lapse of more than 37 days i.e. at a belated stage it lodged protest in order to get more money which plea of complainant cannot be accepted at this stage. It has been observed by Hon''ble Apex Court in United India Insurance v. Ajmer Singh Cotton & General Mills & Ors., II (1999) CPJ 10 (SC)=VI (1999) SLT 590=AIR 1999 SC 3027, that where complainant had executed discharge voucher in full satisfaction of his claim then setting aside discharge voucher in full and final settlement claim is only tenable if he proves that it was obtained by fraud or coercion etc. In the present case there is no circumstance to detail that the opposite parties had got discharge voucher from the complainant by practising fraud, coercion etc.

The authority M/s. Ambika Construction v. Union of India, 2007 (1) RCR (Civil) 257 of Hon''ble Apex Court cited by the learned Counsel for complainant is not applicable to the facts of the present case. In the above said authority, in para 12 it has been observed by the Hon''ble Apex Court that a case was made out before the learned Arbitrator as well as Single Judge that the appellant had been compelled by circumstances to submit no objection certificate without which no payment even of lawful dues was made by the railways. It was sought to be urged that it is common practice for discharge receipts to be given before any payment is made and the appellant had made compelling circumstances, merely followed such practice in order to recover even its security deposit which was not being paid to it. Therefore, he was compelled to give discharge voucher before the payment was released to him as it was practice of railways. But it has not been shown in the present case that it was practice of OP to receive full and final settlement receipt before making payment.

7. HENCE, we hold that complainant had voluntarily received the payment of Rs. 54.05 lacs and had issued receipt in full and final settlement of the claim and cannot allege afterwards that he was made to sign voucher under pressure and in fact he had not agreed for the same. Counsel for complainant submitted that the survey report Annexure R-1 is not valid inasmuch as the building was assessed by the surveyor to the tune of Rs. 22.35 lacs, although, it was insured for Rs. 20 lacs and as such Surveyor had wrongly assessed the value of building on the basis of market value by imposing cut of 12.73% which was illegal. He further contended that 2% depreciation for five years had been assessed which comes to 10% and Rs. 1,47,976 had been deducted by the Surveyor and once insurance had been effected from June, 2002 then depreciation had already been done and it cannot be imposed twice. Further the Surveyor had deduced 25% salvage to the tune of Rs. 3,32,946 which includes of fire to the building . But

after fire, nothing remains valuable which could be converted into money. He further contended that the amount of undamaged portion had been increased to Rs. 1,32,442 and Rs. 1,72,000 had been deducted as building below plinth level construction @ 17% which is illegal and the total deficient payment on account of building cost comes to Rs. 8,85,000. He further contended that raw material was insured for Rs. 30 lacs but OPs paid Rs. 24.05 lacs and gross profit claimed was 90,000 which also included labour charges and only net profit could be deducted and not the gross. He further contended that some amount had been deducted as salvage but in fire nothing remains as the entire product was made of chemical and was destroyed and the deduction of salvage to the tune of Rs. 66,580 was patently illegal. Prima facie report of Surveyor is to be taken correct. We have gone through the report of Surveyor Annexure R-1 dated 8.10.2002. He made detailed survey report and had given reasons for depreciation of the amounts in question. Prima facie it cannot be challenged. It is difficult to believe that nothing remains after the fire. Certainly some material is left as far as machinery and building are concerned. He had deducted some amount as wastage. Certainly mattresses are made by cutting big foam sheets and some material goes waste and cannot be used for making pillows etc. Anyhow we are not going to enter into this controversy because complainant has accepted the amount in full and final settlement of the claim which is valid.

8. THUS, we hold that there is no force in the complaint as complainant had voluntarily accepted a sum of Rs. 54.05 lacs in full and final settlement of the claim. Consequently, complaint is dismissed. However, parties are left to bear their own costs. Copies of this order be communicated to the parties, free of charge. Complaint dismissed.