(2015) 08 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Case No : 88 of 2010

Clearvision Industries APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Citation : (2015) 08 NCDRC CK 0026

Hon'ble Judges : V.K.JAIN J.

Judgement

1. THE complainant which is a partnership firm is engaged in the business of manufacturing and assembly of electronic goods at its manufacturing unit Raisen in M.P. and has its registered office at 14/39, Shakti Nagar, Delhi. The complainant obtained a Fire and Special Peril Policy insuring its building, plant and machinery, furniture, fixtures and fittings as well as the stock of raw - materials, semi -finished goods and finished goods, for a sum of Rs. 4,88,00,000/ -. It was renewed for Rs. 5,10,00,000/ - for the period from 31.5.2007 to 30.5.2008, for Rs. 2,10,00,000/ - for the period from 31.5.2008 to 26.6.2008 and for Rs. 6,10,00,000/ - for the period from 26.6.2008 to 25.6.2009. The original policy as well as the first two renewals were on reinstatement basis but the last renewal did not carry the reinstatement clause. This happened on account of a clerical error on the part of the Insurance Co. while issuing the policy for the period from 26.6.2008 to 25.6.2009. A fire broke out in the factory premises of the complainant on 7.11.2008, causing damage to the building, plant and machinery as well as the stocks of the complainant. Shri Vinod Sharma, Surveyor was appointed by the Insurance Co. to assess the lass. Though the complainant had submitted a claim for Rs. 3,63,18,880/ -, the aforesaid surveyor assessed the loss at Rs. 2,13,02,763/ - which was duly paid to the complainant, after obtaining a discharge voucher from him. The case of the complainant in this regard is that a blank discharge voucher was executed by him. Being aggrieved from reimbursement of part only of its claim, the complainant is before us seeking payment of the balance amount of Rs. 1,29,96,307/ - along with interest, compensation and cost of litigation.

2. THE complaint has been resisted by the Insurance Co. primarily on the ground that the policy in question was not issued on reinstatement basis and the loss assessed by the surveyor was duly paid. The first question which arises for our consideration in this complaint is as to whether the building, plant and machinery and stock, etc. of the complainant were insured on reinstatement basis or on market value basis. A perusal of the insurance policies issued to the complainant from time to time, would show that the original policy as well as two renewals, the first from 31.5.2007 to 30.5.2008 and the second from 31.5.2008 to 26.6.2008 were issued on reinstatement basis. This is not the case of the Insurance Co. that while seeking renewal for the period from 26.6.2008 to 25.6.2009 for the increased sum of Rs. 6,10,00,000/ -, the complainant had sought insurance on market value basis. In any case, a perusal of the letter dt. 2.2.2009 sent by Pandav Nagar Branch Office of the Insurance Co. to the Divisional Office in Laxmi Nagar, clearly shows that issuance of policy for the period from 26.6.2008 to 25.6.2009 without reinstatement basis was a clerical error since, while underwriting the business, the Underwriting Assistant had not clicked the option of reinstatement basis in the system. It is further stated in the said letter that the intention of the insured from inception of the first policy was to insure the property on reinstatement value basis. The Branch Office, therefore, recommended for post -loss endorsement. The aforesaid letter leaves no doubt that the policy taken by the complainant was on reinstatement basis and it was solely due to a clerical error on the part of the Insurance Co. that the requisite endorsement in this regard was not included while issuing the said policy. We, therefore, hold that the complainant is entitled to reimbursement on reinstatement basis.

3. A perusal of the report of the surveyor would show that he did not grant any reimbursement to the complainant for sample items which the complainant had valued at Rs. 2,39,808/ -. The reason given by the surveyor for not assessing the aforesaid items was that they were supplied by the various customers, on the basis of which orders were to be executed as per designs and specifications of the samples and, therefore, the said samples were not saleable to general customers but had to be returned on the purchase cost. The learned counsel for the complainant maintained, during the course of arguments that the aforesaid sample items were procured by the complainant, at considerable cost and they could be easily sold in the market. He also submitted that the aforesaid items were not to be returned to the customers for whom the said samples were procured. The report of the surveyor does not indicate on what basis he presumed that the aforesaid sample items were to be returned to the customers and were not saleable to the general customers. Even a sample item can be sold in the market. Therefore, we are of the opinion that if the complainant proves that it had procured/got prepared the samples at its own cost, it is entitled to either the cost price or the market price of these sample items as on the date of loss, whichever be lower. We, therefore, direct the Insurance Co. to request the surveyor to assess the value of the aforesaid sample items accordingly and make

the payment, if any, payable in terms of the assessment made by the surveyor.

4. THE surveyor made deduction of 5% towards dead stock/slow moving stock, on the ground that these were carried forward from the previous year and there was a frequent change in the model/designs of those items. In our opinion, no such blanket deduction was justified. If some items had become obsolete/slow moving on account of change in the model/design etc. the surveyor should have assessed the market price of those obsolete/slow moving items as on the date of the loss and made appropriate deductions in case the said market price was less than the cost price of those items. A general deduction of 5% without even giving the value of the alleged dead stock/slow moving stock, in our view, was wholly unjustified. We, therefore, direct the Insurance Co. to request the surveyor to assess the market price of the obsolete/slow moving stock as on the date of the loss and make appropriate deductions from the cost of the complainant, in case the same is found to be less than the cost price of the complainant. Subject to the aforesaid deduction, the Insurance Co. will pay the cost of the price of the said dead/slow moving items to the complainant. The surveyor assessed the value of the building of the complainant at Rs. 123.33 lakhs though the insured had claimed the same to be Rs. 72.88 lakhs. Since the building was assured only for Rs. 40 lakhs, he found the same to be under insured to the extent of 67.57% and accordingly assessed the net loss to the building at Rs. 5,55,623/ -. The surveyor found that the rates mentioned in the valuation report submitted by the complainant were quite low. No evidence has been led by the complainant before us to prove that the actual market value of the building was less than what it was assessed by the surveyor. If the assessment of the market value of the building by the surveyor was not acceptable to the complainant, he ought to have produced the evidence, before this Commission to prove its actual value as on the date of the loss. That having not been done, we have no hesitation in accepting the assessment made by the surveyor. Accordingly, we reject the challenge to the net assessment made by the surveyor as regards the value of the building of the insured.

5. WE also find that the surveyor made a deduction of 75% from the value of the damaged machinery which he had assessed at Rs. 52,94,121/ -. Applying the said depreciation, he computed the cost of the damaged machine to be Rs. 13,23,530/ -. After making deduction of Rs. 33,088/ - towards salvage, the net loss to the damaged machines was assessed by him at Rs. 12,90,442. It was contended by the learned counsel for the complainant that since the policy taken by the complainant was on reinstatement basis, depreciation could not have been applied by the surveyor, the same being applicable only in a case of market rate policy. In our opinion, in a reinstatement policy, the Insurance Co. is required to either replace the damaged/destroyed asset or pay the cost of such an asset to the insured, so as to restore status quo ante, as it existed prior to the loss/damage. In other words, if the asset is say 5 years old, the Insurance Co. has to either replace it by an identical 5 year old asset or it should pay the market value of the 5 year asset, as on the date of the loss to the insured. The

depreciation in a case of reinstatement policy can be applied if the lost/damaged asset is an old asset but the value before the application of the depreciation should be the market value of the new asset as on the date of the loss/damage. Neither the acquisition cost of the insured nor the market price of the lost/ damaged asset, as on the date of commencement of the policy would be relevant.

6. A perusal of the annexures to the report of the surveyor would show that he took the capital value of the asset, in the year in which it was acquired, applied the relevant RBI Index, arrived at the indexed value and then applied the prescribed depreciation to the indexed value. We find that the capitalized amount was 4968 in 1990 -2000. Applying the RBI Index (1455), the surveyor determined the indexed value to be 7228. After applying 75% depreciation, he came to the net value of 1807. Similarly for another asset, amount capitalized in the year 2000 -2001 being 157, he applied RBI Index (1435), arrived at the indexed value of 225. After applying deprecation, he came to the net value of 57. It would thus be seen that the surveyor has applied depreciation on the market value as on the date of the loss/damage, though the said market value was arrived at on the basis of the relevant RBI Index instead of verifying the market price of the lost/damaged plant and machinery from the market. Had the surveyor applied depreciation to the amount capitalized in 1990 -2000/2000 -2001, the formula adopted by him would have been wrong. However, considering that no evidence has been produced by the complainant to prove that the actual market value of the lost/damaged assets as on the date of the loss/damage was higher than that assessed by the surveyor, we see no reason to reject the indexed value arrived at by the surveyor. Therefore, we find no fault in the assessment of the plant and machinery made by the surveyor. The stock of the insured was lying at two locations, one being the main factory building and the other being adjoining premises taken on rent. Only the stock kept in the main factory building was insured whereas the stock kept in the adjoining premises taken on rent was not insured. The surveyor noted that the EPS, front cover, back cover and packing boxes were the items lying at the above referred two locations and the entire stock of these items because of their nature had become lumps and ashes after fire. No inventory of the burnt stock, therefore, was possible for him though the safe stock in the main building could be inventorised. The surveyor, instead of applying a scientific and logical formula for division of the aforesaid items which had been kept in two locations, divided the said stock into two equal parts for the purpose of his assessment, thereby recommending payment only for 50% of such stock. In our opinion, applying volumetric method, the surveyor should have excluded the maximum stock of EPS, front cover, back cover and packing boxes which could be stored in the uninsured rented premises and recommended reimbursement for the remaining lost/damaged stock. That would have insured no undue gain to the insured while at the same time ensuring that his genuine claim is not defeated on account of the arbitrary method adopted by the surveyor in this regard. We, therefore, direct the Insurance Co. to request the surveyor to quantify the total stock of

EPS, front cover, back cover and packing boxes which could have been accommodated in the uninsured rented premises on the back side of the main factory building and reimburse the complainant for the rest of the lost/damaged stock.

7. NO other point was urged before us during the course of the arguments. The complaint, therefore, stands disposed of in terms of this order. A fresh assessment in compliance of this order shall be carried out and completed within six weeks from today and additional payment to the complainant shall be made within four weeks thereafter along with interest at the rate of 9% per annum, from the date on which the earlier payment of Rs. 2,13,02,763/ - was made. In the facts and circumstances of the case, there shall be no order as to cost.

