**(1996) 01 NCDRC CK 0012**

**In the National Consumer Disputes Redressal Commission**

Consumer Protection Organisation APPELLANT

Vs

DIVISIONAL MANAGER UNITED INDIA INSURANCE CO LTD RESPONDENT

**Date of Decision :** 22-01-1996

**Acts Referred:**

**Citation :** 1996 1 CLT 567 : 1996 1 CPC 228 : 1996 1 CPJ 275 : 1996 1 CPR 40

**Hon'ble Judges :** V.BALAKRISHNA ERADI , B.S.YADAV , S.S.CHADHA , R.THAMARAJAKSHI , S.P.BAGLA J.

# Judgement

1. THIS appeal is directed against the order of the Tripura State Commission at Agartala dated 5th May, 1993 passed in Complaint No. CDRC/ C -2 of 93 dismissing the complaint.

2. THE facts stated in the complaint filed by a voluntary Consumer Protection Organisation on behalf of Shri Khagendra Chandra Das are these : - Shri Das had taken out an Insurance Policy No. 130802/11/13/11/00950/90 with the United India Assurance Co. Ltd. in the sum of Rs. 50,000/ - covering his business shop against fire. On 28th December, 1990 a fire accident took place in which Shri Das is alleged to have suffered a loss of Rs. 50,000/ - duly certified both by the Fire Brigade Authority and the Police Authority. The said loss was surveyed by the Surveyor appointed by the Insurance Company. The Insurance Company obtained the names and addresses of the sundry creditors from Shri Das and later on issued letters to sundry creditors out which two letters were returned to the Insurance Company by the Postal Authority with remarks ''not known''. Based on this the Insurance Company without any inquiry of any kind, jumped into a decision and held that it was a case of fraud and consequently repudiated the claim. The complainant alleged that it was a clear case of deficiency in service on the part of the Insurance Company and claimed the insured amount as compensation with costs. The opposite party on being noticed filed a written statement alleging that the complaint is not maintainable and that on inquiry the opposite party found that the sundry creditors named by the insured with whom he had dry fish dealings were nonexistent. The State Commission in the impugned order held that a registered voluntary organisation of consumers is

 

authroised to file the complaint but the complainant has to prove his case by legal evidence and as there is no proof of deficiency in service on the part of the opposite party, the State Commission dismissed the case.

3. WE have perused the record and considered the oral submissions made at the time of hearing. It is not disputed that the insured Shri Das had obtained the said policy of insurance for Rs. 50,000/ - covering the risk of ''fire'' in respect of the shop carrying on business of dry fish at Gandacherra and the policy was in force on the date of the fire on 28th of December, 1990. The fact that the fire accident took place on 28th December, 1990 was certified by the Fire Brigade Authority as well as by the Police Authority. The question is as to what is the quantum of the loss. The insured had lodged a claim of Rs. 50,000/ - due to the damage caused to the stock of dry fish. It appears that the State Commission did not call upon the complainant to substantiate the extent of loss before the State Commission. Whether the sundry creditors of the insured were in existence or not is not the pivotal question. The pivotal question is the quantum of loss which had been deposed by the complainant to be Rs. 50,000/ -. In these circumstances, the State Commissions adjudication is not -satisfactory and has to be set aside.

4. IN the result, the appeal is allowed and the impugned order is set aside. The case is remanded back to the State Commission for de novo trial after affording an opportunity to the parties to substantiate their versions. We make no order a s to costs of the proceedings before this Commission.