(2016) 10 NCDRC CK 0080

In the National Consumer Disputes Redressal Commission

Case No : 2747 of 2016

DHARMCHAND — APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. & ANR. — RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:

Citation : 2016 4 CPR 81

Hon'ble Judges : Ajit Bharihoke, ?S.M. Kantikar

Advocate : Suryodaya Prakash Tiwari

Final Decision : Petition Dismissed

Judgement

1. This revision is directed against the order of the Himachal Pradesh State Consumer Disputes Redressal Commission, Shimla dated 1.6.2016 in first appeal No.270/2015.

2. Briefly stated facts relevant for the disposal of the revision petition are that the petitioner Dharmchand owned a house in Mohalla Sultanpur, District Chamba, Himachal Pradesh. The house was constructed in the year 2006 after raising a loan of Rs.5 lakhs. The complainant got the

house insured with the respondent for the insured value of Rs.10 lakhs vide two separate policies for Rs.9 lakh and Rs.1 lakh respectively. According to the complainant, in August, 2012 because of caving of the earth, the house sustained extensive damage. Intimation of damage was promptly given to the revenue authorities as also the opposite party insurance company. The opposite party despite of intimation of damage allegedly did not appoint the surveyor. The complainant therefore got the loss assessed from his own valuer. The assessment was to the tune of Rs.3,81,340/-. As the claim of the petitioner/complainant was not settled, the petitioner filed a complaint before the District Forum, Chamba.

3. The complaint was contested by the opposite party. The District Forum vide order dated 7.7.2014 disposed of the complaint with the direction to the opposite party to process the insurance claim of the complainant and settle the claim.

4. Pursuant to the said order, the petitioner/complainant submitted requisite documents with the insurance company. The insurance company appointed a surveyor, who reported that though some cracks had developed in the walls and the slabs but nothing was payable to the petitioner/complainant as the damage was not covered under the insurance policy. The opposite party insurance company therefore repudiated the claim.

5. Being aggrieved of repudiation of the claim the petitioner/complainant filed a fresh complaint seeking direction to the opposite party to pay to the complainant the amount of loss assessed by the complainant''s valuer i.e. sum of Rs.3.8 lakhs. The opposite party resisted the claim and submitted that the damage caused to the property was not covered under the insurance policy because it was due to faulty construction using sub-standard material.

6. The District Forum on consideration of pleadings and the evidence allowed the complaint and directed the respondent/opposite party to pay to the petitioner/ complainant a sum of Rs.3.8 lakhs with interest @ 9% p.a. from the date of filing of complaint till realization, besides complainant was awarded compensation of Rs.5,000/- for harassment etc. and Rs.3,000/- against litigation charges.

7. The opposite party being aggrieved of the order of the District Forum preferred an appeal. The State Commission, Himachal Pradesh after hearing the parties partly allowed the appeal and reduced the amount of compensation from Rs.3.8 lakhs to Rs.1,40,232/- while maintaining remaining directions of the District Forum.

8. Petitioner/complainant being aggrieved of the reduction of compensation by the State Commission has preferred this revision petition.

9. Learned Shri Suryodaya Prakash Tiwari, Advocate for the petitioner has contended that the impugned order of the State Commission is against the facts. It is contended that the State Commission has failed to appreciate that the opposite party did not appoint a surveyor. Therefore, the complainant was compelled to get the damage valued by his own valuer who has assessed the cost of repair of damages to the extent of Rs.3.8 lakhs. Thus, there was no justification for reduction of the compensation.

10. We do not find merit in the above contention. On perusal of the record and the impugned order we find that the State Commission was of the view that as per the survey conducted by the surveyor of the insurance company the total value of the subject house which got damaged was

Rs.30.69 lakhs but the petitioner/complainant had taken under insurance for a sum of Rs.10 lakhs. Therefore, the amount of compensation to be paid for the damage caused to the property was liable to be reduced on proportionate basis to 32.58% of the value of the damages which amount as per calculation comes down to Rs.1,24,232/-, out of which the State Commission allowed deduction of the excess clause of Rs.10,000/- in terms of the insurance contract. Thus, the

State Commission while maintaining the order of the District Forum on all other aspects reduced the amount of compensation payable to Rs.1,14,232/-.

11. Since this is a case of under insurance, we do not find any material irregularity or jurisdictional error in the order of the State Commission reducing the compensation awarded by the District Forum. Thus, there is no merit in the revision petition. Revision petition is accordingly dismissed.