(1996) 12 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

Divisional Manager, National Insurance Co. Ltd. APPELLANT

Vs

KALYANI AGENCIES RESPONDENT

Date of Decision : 06-12-1996

Acts Referred:

Citation : 1997 1 CPJ 78

Hon'ble Judges : P.C.Misra , Biswanath Rath J.

Final Decision : Appeal dismissed with costs

Judgement

1. THIS appeal is directed against the final order dated 14.2.95 of Dhenkanal District Consumer Disputes Redressal Forum in C.D. Case No. 15 of 1994. The respondent before us namely, M/s. Kalyani Agencies, as complainant filed a complaint against the present appellant-Insurance. Company when the latter did not settle their insurance claim.

2. THE case of the complainant before the Forum was that it had taken an insurance policy for Rs. 83,000/- covering its gas cylinders against risk of theft and burglary. On the night of 28.5.92 85 gas cylinders were stolen from its permises. THE complainant lodged F.I.R. and also filed claim petition. THE police investigated the case and reported on 10.2.93 that the ease was true but there was no clue. THE Insurance Company appointed Surveyors one after another but did not settle the claim. Meanwhile the complainant had to pay up Rs. 46.750/- to M/s. Hindustan Petroleum Corporation on 25.9.92 towards value of the stolen cylinders. But the Insurance Company did not settle the claim for which the complainant claims from the Insurance Company a sum of Rs. 91,730/- on various counts detailed in the schedule including Rs. 46,750/- paid to the H.P. Corporation for value of stolen cylinders. It was the case of the opp. party that it appointed one S.K. Brahma as Surveyor immediately on getting information about theft of cylinders on 29.5.92 but as the latter did not undertake the work a second Surveyor, Shri K.C. Sarangi was appointed on 1.6.92. Soon thereafter one Shri Srinivas Mishra, Investigator was appointed on 8.6.92 to investigate the matter. The Surveyor Shri Sarangi pursued with me complainant several times to

get the required documents. Complainant/submitted Police Final Report on 28.3.93 and kept on submitting documents one after the other till 30.10.93. In the meantime Investigator Shri S. Mishra submitted his report on 27.6.93. Shri K.C. Sarangi, Surveyor submitted his report on 4.2.94. As theft has taken place twice during the currency of insurance policy with a short gap and some discrepancies in stock register were noticed the opposite party appointed on 2.11.93 one Shri J.K. Patnaik, Surveyor and Loss Assessor to verify the books of accounts of the complainant and to confirm me genuine loss. Shri Patnaik conducted survey on 18.11.93 and 24.11.93 and submitted his report on 17.3.94 where after the claim was settled for Rs. 14,734/- on 23.5.94.

The Forum after perusing the records and documents including the L.P.Gs. Traders'' Combined Policy, Police Report, Cash Receipt granted by H.P. Corporation in support of pay mentor cost of cylinders and survey report of the second Surveyor Mr. Patnaik and after hearing the parties came to the conclusion that the opposite party should indemnify the complainant for loss of the cylinders which case to Rs. 46,450/- which amount was paid by the complainant to H.P. Corporation and besides pay compensation of Rs. 2,000/- and cost of Rs. 100/- and ordered accordingly. Hence this appeal.

3. THE appellant has taken the following grounds in its appeal. (i) Loss assessed by Shri Patnaik, Surveyor on the basis of the specimen copy of L.P. Gas Traders'' Combined Policy which was filed by opposite party before the Forum was not accepted by the Forum merely because the said policy was unsigned one. (ii) Forum has held the opposite party deficient for delay in settling the claim although delay was solely attributable to late submission of papers by the complainant. (iii) Forum has failed to appreciate the appointment of Shri Patnaik to resurvey the loss and has instead commented upon the belated appointment without considering the fact that such appointment was felt necessary only after noticing discrepancies in the book of accounts of the complaint brought out in the survey report of Shri Behera. (iv) Forum ought to have dismissed the complaint because the cause of the complaint no more survived after the opposite party settled the claim. (v) Forum should not have gone into the adequacy of the compensation.

We have examined the case record of the Forum, perused the counter filed by the respondent, heard Counsel for both parties and gone through the written notes of argument filed by them. Before dealing with the points raised by both parties during the hearing and in the written note of argument we proceed to examine the tenability of the grounds of appeal as noted in the preceding paragraph.

4. GROUND (i)-Non-acceptance of an unsigned and specimen copy of policy - Insurance policy is a contract. Both assured and the assurer are contracting parties. Utmost good faith must be observed by both the contracting parties. Good faith should forbid either party from withholding material facts from the other with the dishonest intention of benefiting itself from the ignorance of that

withheld fact. In the instant case if the so-called General Conditions formed a part of the Policy which allegedly included Clauses 11 and 14, insured should have been supplied with that part of the policy document duly signed and authenticated as the two folios filed by the insured are. On the other hand, if the insurer did supply that part of the policy to the insured but the latter chose not to file the same before the Forum lest it would go against it, the insurer could have filed its own copy. Having not done either of the two, which was available to and required to be done by the Insurer, the only irresistible conclusion available to the Forum was that the so-called general condition did never form a part of the policy. And since the principal policy, a copy of which has been filed by the insured alongwith his complaint petition before the Forum, has been duly signed and sealed in token of acceptance of the contract, a specimen and unsigned copy cannot be accepted as a document. The Forum has therefore rightly refused to accept the said specimen copy as evidence. Ground No. (ii) - Holding appellant deficient for delay in settling the claim - It is a fact that the appellant-Insurance Company appointed Surveyor immediately after it was informed about the theft of cylinders. But the Surveyors have taken inordinately long time to assess the loss. Besides, they have called for papers not relevant for the purpose of assessment of loss. Lastly because of duplicity of agencies appointed by the Company simultaneously for the same purpose and both agencies - the Insurance Investigator Shri Mishra and the Surveyor Shri Sarangi asking for records there was bound to be confusion and delay. The date chart filed before the Forum by the appellant alongwith its written version shows that on the day following the date of occurrence, i.e., on 29.5.92, it appointed one Shri Brahma to survey the loss. As Shri Brahma, for personal reasons, did not take up the work, one Shri K.C. Sarangi was appointed on 1.6.92 as Surveyor. Very soon thereafter one Shri S. Misra appellant''s own officer was appointed to investigate the reported theft. Shri Mishra took full one year and submitted his report on 27.6.93. Shri Sarangi, Surveyor, submitted his report still 7 months letter, i.e., on 4.2.94 when Insurance Company had not received Shri Sarangi''s survey report, there was no material or basis available to the Insurance Company for appointing Shri J.K. Patnaik, another Surveyor to confirm the genuineness and quantum of loss and that too when the 1st Surveyor was still retained by them. Appellant has not disclosed the contents of the report submitted by its own Investigator. Thus appointment of 2nd Surveyor was not justified and not called for at all. In the absence of the investigation report it is available to be presumed that Insurance Company''s own Investigator has not only confirmed the loss but also the quantum of loss and for that reason Insurance Company appointed another agency probably with the view to getting a report that would suit it. Appointment of 2nd Surveyor only delayed matters which could have been avoided. Again, long before appointment of 2nd Surveyor Police Final Report confirming the loss of cylinders was available and evidence of payment of value of cylinders to the owner thereof namely, Hindustan Petroleum Corporation was also available with the Insurance Company. Complainant on being disgusted with appellant''s delaying tactics had got legal notice served. Despite all this the appellant chose to further delay the settlement by appointing another Surveyor. All this go to prove that the appellant was not sincere to settle the claim of the complainant. It is revealed from the survey report of the 2nd Surveyor Shri Patnaik that the first Surveyor did not quantify the loss. This is queer and not believable. In any case the report of the 1st Surveyor has not been filed. By now it is well settled that delay in submission of report by Surveyor and Investigator which is not reasonably and satisfactorily explained amounts to deficiency towards the insured. In this context it is noted that, though as stated in the written version of appellant filed before the Forum all the papers had been supplied by complainant to the Surveyor Shri Sarangi by 30.10.93, the latter did not submit survey report till 4.2.94. This clearly shows that the Surveyor did not do his job properly for reasons best known to the appellant. Appellant has stated in his report that complainant supplied Police Final Report to Surveyor on 28.3.93 "without submitting other required documents." Appellant no where says what me other relevant documents are. Also written version filed by Insurance Company does not disclose anywhere that Surveyor did ask complainant for any other document. Insurance Company has loosely and vaguely stated that "Other documents" did not forth come from complainant. In C.D. Case No. 16/94 filed by the same complainant against the same appellant on the same subject, it has been stated in the written version that complainant could not submit necessary papers to Surveyor because the same were retained by Shri S. Mishra, appellant''s own Investigator with himself. Since the subject in both the consumer dispute cases is the same and parties are same, it is logical to conclude that delay, if any, in submission of papers by complainant to Surveyor is attributable to appellant''s Investigator and not to the complainant. The Forum is, therefore, justified in observing that there was delay in settling the claim and it amounted to deficiency. There was, we are satisfied, no delay nor lack of co-operation on the part of the complainant. Appointment of more than one agency to simultaneously probe into the matter and calling for too many papers and belatedly appointing a second Surveyor without any apparent reasons have contributed to delay for which the appellant-Insurance Company alone is responsible. Ground No. (iii)-belated appointment of Shri Patnaik for re-survey. This aspect need not be dealt with separately because the detailed examination of ground (ii) already cover this point.

5. GROUND No. (iv) - Forum has gone into questions beyond the scope of the complaint. The complainant''s prayer was for a direction from the Forum to compensate it on several counts such as indemnification of the loss, interest thereon, expenses incurred in contacting opposite party and mental agony. The Forum could not determine the indemnity and compensation unless it examined and dealt with all the aspects as it has rightly done. We do not, therefore, feel that the Forum went beyond its jurisdiction.

6. GROUND No. (v)-Forum ought to have dismissed the complaint as the cause no more survived after opposite party settled the claim. We find from the records that the appellant has not settled the claim by the time the Forum disposed of

the case. There was no discharge from the complainant in token of full satisfaction. As such the cause of action survived still. Ground No. (vi)-Forum should not have gone into the adequacy of the compensation paid by appellant. We find from the records that the appellant had not paid the damage till the case was disposed of by the Forum. As such question of adequacy or otherwise does not arise. Also when offer of settlement is arbitrary and without any application of mind, the Forum must examine the adequacy or otherwise. We thus find that the grounds of appeal are not tenable at all. We thus find that the grounds taken by the appellant-Insurance Company have no force and are liable to be rejected.

Appellant argued before us that the General Conditions containing Clauses 11 and 14 do form part of the policy. We have alredy dealt with this point earlier while examining Ground No. (1). When the copy of the authentic policy document filed by complainant does not contain the alleged enclosure, "Clause LPG(TC)" and that the document filed has not been challenged by appellant-opposite party and further when the said appellant has not filed copy of its own office copy of the enclosure if at all any, it is in possession. We must hold that the alleged enclosure did never form a part of the policy document and this is an after thought and is violation of the doctrine of Uberrima fides which applies to both the contracting parties namely, assured and assurer. Taking shelter under some paper which is not part of the agreement with a view to drawing the other party into an unfavourable bargain and inconvenience amounts to dishonesty which the doctrine of utmost good faith forbids.

7. FURTHER, the alleged Clause 11 cannot deprive the insured of the right to indemnification of any part of the loss unless it is beyond the sum assumed. The purpose of insurance is to indemnify the insured against the loss subject to the value insured and not otherwise. In consequence, we reject the plea of the appellant and we reject the formula adopted by the 2nd Surveyor to bring down the settlement amount from Rs. 46,750/- to Rs. 14,734/-.

8. UNDER the facts and circumstances as discussed above we dismiss the appeal as having no merits and we confirm the award of the District Forum, Dhenkanal. We further direct that the appellant do pay Rs. 500/-as costs to the respondent within thirty days from the receipt of this order in addition to the amount awarded by the Forum. Appeal dismissed with costs.