(2003) 05 NCDRC CK 0035

In the National Consumer Disputes Redressal Commission

DIVISIONAL MANAGER, ORIENTAL INSURANCE COMPANY — APPELLANT

Vs

RAHUL RANJAN KHAD AND CEMENT STORE — RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Citation : 2003 4 CPJ 378

Hon'ble Judges : D.P.S.Choudhary , Asma Ahmad J.

Final Decision : Appeal partly allowed

Judgement

1. THIS appeal has been preferred by the appellant-O.P. Oriental Insurance Company (hereinafter referred to as Company) against the order dated 10.12.2002 passed by District Forum, Ara in Complaint Case No. 58/2002 directing the appellant to pay a sum of Rs. 1,65,000/- for the loss suffered by the complainant which is suffered due to flood and allowed the interest @ 18% and litigation cost of Rs. 1,000/-.

2. THE brief fact of the case is that complainant has a cement and fertiliser store in the name and style of "Rahul Ranjan Khad and Cement Store". He took loan from Punjab National Bank for this business for his livelihood. He has insured the store with the appellant for a value of Rs. three lacs. In the night of 5.10.2001 there was heavy rain which caused damage to the fertiliser and cement kept in the shop and godown attached to each other. On 6.10.2001 the complainant informed the appellant-Company of the occurrence. On the same date a Surveyor Sri S.K. Shahi visited the shop and godown of the complainant at the instance of the Insurance Company who found that the complainant has suffered a loss of Rs. 1,60,000/-. Subsequently, the Insurance Company appointed another Surveyor, namely Dharmendra Singh. It is alleged that the second Surveyor made a demand of illegal gratification of Rs. 50,000/- from the complainant which he refused. Subsequently the Insurance Company did not accept the contention of the complainant and repudiated the claim on the ground that no water has been entered inside the shop of the complainant. THEreafter the complainant filed the case. The main contention of the appellant is that the

Insurance Company has insured the shop of the complainant and not the godown where the cement and fertiliser were kept. If there was any damage due to rain of the articles kept in the godown, the Insurance Company is not liable to pay for the same. No article kept in the shop were found to be damaged. The Insurance Company placed reliance on the insurance policy cover and report of the two Surveyors. The learned Lawyer appearing on behalf of the respondent-complainant submitted that from the insurance cover itself it is clear that the shop and godown both are attached to each other and the entire area was insured with the appellant. The learned Lawyer placed reliance on the earlier report of the Surveyor dated 6.10.2001 and submitted that in paragraph-2 RISK it mentions that the risk is stock of all kind of fertiliser and cement kept in the shop and godown situated at Godhana Road, Ara. It is a proprietorship concern and name of its proprietor is Sri Shyam Sunder Singh. The establishment was insured. It further mentions that insured shop and godown is said to be situated inside one premises. The shop has been financed a loan of Rs. two lacs by Punjab National Bank, Ara. The occurrence of heavy rain is admitted by the Surveyor and he found about 3'' high water level entered inside his shop and godown and damaged the lower stacks of Urea and cement stock. The Surveyor assessed the loss of fertilizer and cement bags due to flood to Rs. 1,34,600/- only. The learned Lawyer contended that there was no reason for the Insurance Company to appoint other Surveyor. The second Surveyor was appointed because the report of the first Surveyor was not in favour of the Insurance Company. It has been held by the National Commission that unless a valid reason is shown by the Insurance Company with regard to the report of the first Surveyor, there is no justification to appoint second Surveyor.

From the impugned order it appears that District Forum after considering all the facts and material available before him has held that the shop and godown of the complainant are in the same premises attached to each other. The insurance policy covers both the establishment. The Bihar Shops and Establishment Act and Rules define "Shop" under Section 2(16) which means any premises where goods are sold and it includes an office, store-room, godown etc. whether in the same premises or elsewhere, used in connection with such sales or services. The shop and godown of the complainant was in a same premises and the entire premises was insured with the appellant. Considering these facts the District Forum has allowed a claim of Rs. 1,65,000/- with interest @ 18%.

3. OUR attention has been drawn by the appellant towards the loss assessed by the first Surveyor S.K. Shahi which is to the tune of Rs. 1,34,600/-. There is substance in this contention of the appellant that if the District Forum has relied on the report of the first Surveyor S.K. Shahi there was no reason to enhance the amount of loss assessed by the Surveyor. No valid reason has been assigned in the impugned order in coming to the conclusion that complainant is entitled for a claim of Rs. 1,65,000/-. In the facts and circumstances of the case we are of the view that complainant/respondent is entitled to the claim of Rs. 1,34,600/- only as assessed by the first Surveyor, S.K. Shahi and not for the amount as

ordered by the District Forum. The rate of interest @ 18% is on higher side. It is reduced to 10% per annum from January, 2002 till the date of payment. The litigation cost of Rs. 1000/- is adequate.

4. IN the result, with the above modification in the impugned order the appeal is allowed in part. However, there shall be no order as to cost. Time within 3 months from the date of order to comply the order. Appeal partly allowed.

