(2002) 12 NCDRC CK 0105

In the National Consumer Disputes Redressal Commission

DRUPDEE APPELLANT

Vs

Oriental Insurance Company Ltd. RESPONDENT

Date of Decision : 10-12-2002

Acts Referred:

Citation : 2004 1 CPJ 168

Hon'ble Judges : M.Y.Kawoosa , ChVidya Sagar J.

Final Decision : Complaint allowed

Judgement

1. FACTS barely needed for the disposal of this complaint are that complainant insured his two storeyed building for Rs. 5.00 lakhs and the insurance cover was valid from 26.2.1996 to 25.2.1997. Household goods for Rs. 50,000.00. Admittedly on 13th/14th February, 1997 the said house was set ablaze by the militants. Complainant raised the claim. O.P. deputed Surveyor Javid Hussain Sofi. Javid Hussain Sofi sat over the matter for more than a year. He has not filed the report according to the O.P. While another Surveyor Shakeel Ahmed was also appointed in August, 1998 who submitted his report on 24th February, 1999. He assessed the loss at Rs. 2.00 lakhs. Rs. 2.00 lakhs have been paid to the complainant immediately after the filing of complaint.

2. OBJECTIONS have been filed by O.P. Main plea raised by the complainant is that Surveyor in his report has assessed the total cost of construction of the building at Rs. 4,23,860.00 but arbitrarily according to the complainant he has deducted 50 per cent as depreciation and after deducting Rs. 11,930/- as salvage, net amount he has assessed as Rs. 2.00 lakhs. Complainant has objected to this method of assessment by the Surveyor. Complainant has contended that the guidelines for depreciation has been given. According to the guidelines, for the first 5 years no depreciation is being made and from 5-10 years total depreciation to be made is 2.5 per cent. Instead of deducting 2.5 per cent the Surveyor has deducted 50 per cent. It is an arbitrary method employed by the Surveyor. Learned Counsel for the O.P. has raised two fold objections to this argument No. 1, that the complainant has not proved the age of the

building. No. 2, the dispute is about the quantum. According to the Insurance Special Law the matter will go to the Arbitrator, the Consumer Protection Commission cannot redress this grievance.

Heard learned Counsel for the parties. So far as the age of the building is concerned complainant has categorically in his complaint mentioned that the house in question was built in 1989. In his affidavit also he has reiterated this thing. In the objections O.P. has disputed this age but has not stated as to when it was constructed. Surveyor has in his report mentioned about the filing of the affidavit of the complainant regarding the age but stated that complainant has not produced any revenue record. Surveyor has made no attempt to investigate about the age of the building. We are convinced that Revenue Authorities always do not keep records regarding the reconstructions. There is nothing on record to rebut the assertion made in the affidavit by the complainant that the building was constructed in 1989. Even the Assessor has half heartedly accepted this position. He also has made no attempt to contradict it. For these reasons, therefore, we are convinced that the complainant has proved the building to have been constructed in 1989. Building was of 9 years old when the loss took place. What method Surveyor has employed for the depreciation is not known. He has not explained in his survey report as to how he reduced the amount of cost of reconstructions by 50 per cent. Learned Counsel for the complainant has produced guidelines (Estimating and Costing in Civil Engineering written by B.N. Dutta). These guidelines apparently show that only 2.5 per cent depreciation was to be made if the building is less than 10 years old. Learned Counsel for the O.P. has vehemently argued that these guidelines will not apply. Quantum of award is challenged. This according to the Insurance Rules should go to the Arbitrator.

3. LEARNED Counsel for the O.P. has further argued that Consumer Protection Act is a general law which is superseded by Special Law of Arbitration Act. We are not convinced by this argument. Whether Consumer Protection Act is a special law or a general law we need not to go through the details because the Consumer Protection Act is an additional remedy provided to the consumers in addition to other laws in force. This Act is socially oriented law to protect the Consumers from high handedness of the persons providing the service. The guidelines which Mr. Kashmiri Lal, Counsel for the complainant has quoted has been applied by this commission in Complaint No. 1034/1995 titled Jaggar Nath Dhar v. OIC, wherein it has been held that in Para 6 of the judgment that depreciation cannot be reduced arbitrarily by the Surveyor it is to be reduced according to the norms and rules provided in this behalf. Rules also have been discussed. This judgment has been upheld by the Hon''ble High Court in CIMA 187 of 1997. For these reasons, therefore, we allow contention of the learned Counsel for the complainant and complaint is allowed. Instead of 50 per cent we reduce the loss to 15 per cent which comes to Rs. 3,60,281.00. Interest payable to the complainant will be 9 per cent from 3 months after the date of second survey report i.e., 24.8.1998. But no interest will be paid to Rs. 2.00 lakhs from the date of payment till date. Rs. 2,000.00 will also be paid by the O.P. to the

complainant on account of litigation charges. Whole amount will be paid by the O.P. within a period of six weeks from the date of this order. Complaint allowed.

