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In the National Consumer Disputes Redressal Commission

Durga Enterprises APPELLANT

Vs

ORIENTAL INSURANCE CO LTD RESPONDENT

Date of Decision : 22-05-2008

Acts Referred:

Citation : 2008 4 CPJ 128

Hon'ble Judges : S.N.Kapoor , B.K.Taimni J.

Advocate : S.M.Tripathi , Vivek Kumar

Judgement

1. -THE appellant was the complainant before the State Commission, where he had filed a complaint alleging deficiency in service on the part of the respondent Insurance Company.

2. VERY briefly stated the facts of the case are that the complainant which is a partnership firm had obtained an insurance cover for Rs. 9 lakh on 12. 12. 1996 and the premium was paid. It was the case of the appellant/complainant that during the night between 22nd and 23rd September 1997, an episode of fire devastated the entire goods and material along with original stocks of the complainant which included the original records, accounts book, Bank accounts ledger etc. The matter was reported to the Police, Fire Brigade as also to the respondent. The respondent Insurance Company on receipt of intimation appointed a surveyor who did not submit report, in view of which another surveyor was appointed, who assessed the loss at Rs. 6,78,005. Not being satisfied with this, respondent appointed another surveyor, who estimated the loss at Rs. 5,56,000. Respondent also appointed investigator, yet the respondent repudiated the claim. It is in these circumstances, a complaint was filed before the State Commission, who after hearing the parties and perusal of material on record directed the respondent to pay an amount of Rs. 1,05,000 along with interest @ 9% p. a. with effect from 1. 10. 1997, which was rounded off to Rs. 55,000, hence the respondent was directed to pay Rs. 1,60,000 within one month. Not satisfied with this relief the appellant/complainant has filed this appeal before us. We heard the learned Counsel for both the parties and have

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gone through the material on record. The question of insurance coverage for the fire risk is not in dispute. What is in dispute is the material produced by the appellant/complainant before the surveyor as well as before the Insurance Company.

As per the respondent, none of these materials evokes any evidence. Their impression is based on the report of the Surveyor Sanjay Dwivedi as well as the investigator.

3. THERE is no disputing the fact, that as per material brought on record by the appellant, that the appellant was called several times by the Insurance Company/ surveyor for discussion but he never appeared. A twisted and vague attempt is made by the appellant by drawing our attention to the document appearing at page 77 of the paper-book, addressed by the surveyor to the appellant inviting him for a meeting on 4. 9. 2000 at 11. 30 a. m. Learned Counsel for the appellant has brought on record this letter dated 25. 8. 2000, inviting the appellant on 4. 5. 2000, meaning thereby that the appellant could not have appeared on back date. But the fact of the matter is that the date for the meeting was 4. 9. 2000 and not 4. 5. 2000 as the appellant would have us believe. He has not produced the original document. In fact, we like to reproduce what the State Commission has recorded in this regard: "it may be pointed out that repudiation letter in the subsequent three paragraphs has mentioned that the complainant was invited to the regional office on 4. 9. 2000 at 11. 30 a. m. for discussion and then the date was changed to 13. 10. 2000 at 11. 30 a. m. at the request of the complainant and again he was informed on 5. 9. 2000 for attending the meeting. But though the surveyor M/s. Sanjay Dwivedi and Associates were present but neither the complainant nor anyone on his behalf attended the meeting. Subsequent meeting arranged on 6. 11. 2000 and 17. 11. 2000 also failed because the complainant did not turn up to discuss and explain the complainant''s point of view. On overall assessment of the situation, the insurer, therefore, rejected the claim as aforesaid. "

4. WE need not delve any further on this issue in view of what has been stated above. It was also the case of the respondent that on the crucial points of stocks held by the appellant/complainant as per the Bank as well as the appellant, two different statements have been brought on record, which have been filed by the respondent/complainant with the Bank and they are verified by the Bank. When we see the record, we are not impressed by the integrity of the appellant. When we peruse the "trading, Profit and Loss Account for the year 1995-1996" brought on record, one statement shows the total sales for this period at Rs. 15,05,148, while the other statement for the same period signed by both, i. e. the appellant and the Bank shows total sales at Rs. 25,05,148. In this regard the report of the Investigator makes very interesting reading when they contacted the Bank. His report is as follows: "7. 1 Bank-We have gone to Bank of India, Khair Nagar Road Branch, Meerut and met Mr. Rajeev Kumar Agarwal, Deputy Manager (Credit) and the accounts of the insured were thoroughly checked and the matter was

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discussed in detail with the Bank Manager. The balance sheet as given by the Bank and the one given by insured (duly verified by Bank) were compared there and difference was noted. The Bank Manager stated that the balance sheets given by them vide their letter dated 2. 9. 1999 should be taken as correct. On questioning about the other balance sheet which too is certified by Bank. We were informed that Bank was not having any record about that and the person who appears to have certified the same have been transferred to Delhi. Thus, as a matter of record the documents provided by the Bank vide their letter dated 2. 9. 1999 are to be taken as true and correct for all purposes. "

This statement and the figures given therein cannot be really relied upon. Our view is further strengthened by a certificate produced before us issued/signed by the Sr. Branch Manager of the Bank, in which the stock position as on 31. 8. 1997 is shown as Rs. 9,40,707 whereas according to the complainant himself the stock position on the date of incident was Rs. 8,04,171 as per the complaint filed by him.

5. THE report of the investigator and the second report filed by the second surveyor, namely, Sanjay Dwivedi and Associates, leaves us with very little choice except to agree with the finding returned by the State Commission. The second report of Sanjay Dwivei and Associates, reads as follows: "this is in reference to the above mentioned subject. We are deputed by Oriental Insurance Co. Ltd. Regional Office, Ghaziabad for further investigation in the above loss and we paid visit yesterday at your place but none of the partners were available. We then met your cousin Mr. Vivek Sharma and we explained to him about our visit. We request you to fix a meeting with us so that we could clarify the following- (1) You have given different Balance Sheet, Trading, Profit and Loss Account for the same financial year to your Bank and the final surveyor M/s. R. K. Singhal and Co. Pvt. Ltd. (2) It has been proved that the copies of purchase invoices given to the final surveyor were actually the photocopies of the original bills but as per your statement these got burnt in the fire. Kindly fix a meeting at the earliest in order to clarify the same. "

6. APPELLANT does not appear for the meeting (s) called by the respondent/ surveyor to clarify the issue. Relevant material relied upon by the State Commission from the report of the investigator reads as follows: "7. 1 Bank-We have gone to Bank of India, Khair Nagar Road Branch, Meerut and met Mr. Rajeev Kumar Agarwal, Deputy Manager (Credit) and the accounts of the insured were thoroughly checked and the matter was discussed in detail with the Bank Manager. The balance sheet as given by the Bank and the one given by insured (duly verified by Bank) were compared there and difference was noted. The Bank manager stated that the balance sheet given by them vide their letter dated 2. 9. 1999 should be taken as correct. On questioning about the other balance sheet which too is certified by Bank. We were informed that Bank was not having any record about that and the person who appears to have certified the same have been transferred to Delhi. Thus, as a matter of record the documents provided

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by the Bank vide their letter dated 2. 9. 1999 are to be taken as true and correct for all purposes. From this it is clear that the insured got made two different balance sheets for different purposes in order to gain benefit out of these. This clearly proves mala fide intentions of insured.

7. 2 Purchase Bills-The insured in his statement has told that all his bills got burnt in the fire and he has reproduced the copies of purchase bills from his respective buyers. The branch office of the Insurance Company got the copies of purchase bills verified by investigator Mr. S. C. Tyagi and he in his report mentioned that though the bills were genuine but these were photocopies of the original bills with the insured and not of the duplicate copies retained by the supplier. Thus, this fact clearly contradicts the statement of insured that his all bills got burnt in fire. If all the documents had been damaged in the fire then could the insured obtain photocopies of the original bills. This amply proves the mala fide intentions of insured and also establish concealment of material fact on the part of insured.

7. 3 Clarification from insured-We tried to have a meeting with the insured for discussing the matter regarding the above points and for this we have paid visits to Meerut on 27. 9. 1999, 17. 10. 1999, 31. 10. 1999 and 12. 11. 1999 but the insured was not available even once. We met his cousin Mr. Vivek Sharma on our first visit on 27. 9. 1999 and our purpose of visit was explained but still insured did not meet us on our subequent visits, neither they responded to our various letters. It clearly appears that the insured had been avoiding to meet us for the reasons best known to him and also the fact the insured have no explanation whatsoever on our above observations. As such we are left with no option but to give our investigation report without any statement/clarification from the insured. In light of above we are of firm opinion that the insured has tried to manipulate his claim by fabricating double documents and giving false statement to the insurer. "

Before us also, no effort is made to satisfy us, in any manner, that how there could be variation in the figures mentioned in the two Trading and Profit and Loss statements as also the stocks statement mentioned in the letter of the Bank obtained in the year 2004 as also the figure of stock stated in the complaint. The State Commission, in our view, rightly relied upon only the four documents/ receipts and have awarded the amount after having fully satisfied that the other documents remain unsubstantiated.

7. BEFORE us certain documents have been brought on record with an endorsement that these stocks documents were issued by them (the suppliers) but this remains unsubstantiated, uncorroborated in the absence of any affidavit from any of the parties. Before us a plea has been taken that the respondent Insurance Company could not have appointed an Investigator under the law much after the order has been passed by the State Commission. Law is now well settled by the Hon''ble Supreme Court in the case of National Insurance Company Ltd. v. Harjeet Rice Mills, III (2005) CPJ 6 (SC)=v (2005) SLT

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503=2005 CTJ 969 (SC) (CP)" wherein they held that Section 64um of the Insurance Act cannot stand in the way of the Insurance Company in establishing that the case was a fraud on the Company. Once the insurer were prima facie of the view that some wrong/unsubstantiated claim is being preferred, the insurer were within its right to appoint an investigator, view of which we see no merit in this plea.

8. TO go into the whole question of verifications of these claims, will involve adjudicating disputed factual questions, which cannot be adjudicated before a consumer Fora in summary jurisdiction, as per law laid down by the Hon''ble Supreme Court in the case of Oriental Insurance Company Ltd. v. Munimahesh Patel, IV (2006) CPJ 1 (SC)=vi (2006) SLT 436=2006 CTJ 1073 (SC) (CP), in view of which on merits, we see no ground to interfere with the well reasoned order passed by the State Commission and find no merit in this appeal hence this appeal is dismissed. However, if the appellant feels that he can support his claim by leading further evidence to settle the disputed factual questions, he would be free to approach any Fora other than Consumer Fora, if so advised. In case the appellant decides to file a case before a Civil Court, he will be entitled to the benefit of the observations of the Supreme Court in Laxmi Engineering Works v. P. S. G. Industrial Institute, II (1995) CPJ 1 (SC)=1995 (3) SCC 583, for the purpose of exclusion of time spent before Consumer Fora for the purpose of computation of limitation. Appeal dismissed.

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