(2006) 10 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

ELLORA PAPER MILLS LTD. APPELLANT

Vs

DIVISIONAL MANAGER RESPONDENT

Date of Decision : 03-10-2006

Acts Referred:

Citation : 2006 0 NCDRC 49 : 2006 4 CPJ 195

Hon'ble Judges : M.B.SHAH , RAJYALAKSHMI RAO J.

Advocate : N.H.SHAMS , S.K.SHARMA , VAIBHAV MEHTA

Judgement

1. THE Complainant M/s. Ellora Paper Mills Ltd.. took Fire Insurance Policies from opposite party, M/s. New India Assurance Company Ltd. for covering the risks against fire to its plant, machinery and building for a total value of Rs.18,34,12,117/- vide policy No.11/150602-04855/930/95 for the period from 6.1.1995 to 5.1.1996 and for the risk against stock of waste paper, pulp, cotton, linters, gunny bags, etc. for Rs.1,50,00,000/- vide policy No.11/150602-4813/930/95 for the period from 10.1.95 to 10.1.96 respectively. After the premises were inspected by the approved surveyor of the opposite party premium payable was fixed accordingly and the Complainant paid the requisite premium of Rs.4,71,092/- for insurance of plant and machinery and an amount of Rs.1,07,730/- for the insurance of stock of waste paper, pulp, cotton, linters, etc. to the opposite party.

2. IT is stated by the Complainant that on 28.3.1995 at around 9.50 p.m. fire broke out at their factory premises causing heavy loss to the plant, machinery and building of the factory at Dewada-Khurd near Tumsar. The Complainant gave intimation of the occurrence of fire to the Fire Brigade Department, the Police, the Gram Panchayat and to the office of the opposite party on 29.3.1995. After a couple of days, i.e. on 1.4.1995 again a fire broke out at the insured premises of the Complainant"s works and caused damages to the insured property. Once again the Complainant intimated to the opposite party as well as other concerned authorities. The opposite party appointed its Surveyor who inspected the insured premises, plant and machinery and assessed the loss caused due to the damage

by the fire. It is stated by the Complainant that vide letters dated 13.7.1995, 18.7.1995, 27.7.1995, 28.8.1995, 6.9.1995, 8.9.1995, 13.9.1995, 11.10.1995, etc. the Complainant submitted all the requisite papers to the Surveyor and continuously pursued the opposite party to settle the claim at the earliest. Despite their efforts for early settlement by the Complainant, opposite party continued to delay the process. O.P."s Surveyor, M/s. SKKS Surveyors and Assessors after the survey is conducted sought consent letter from the Complainant on 19.6.1995 requiring them to give its consent for full and final settlement of its claim under Policy No.11/15602-4855 for an amount of Rs.27,49,065/- as net payable claim as regards to the claim for loss due to fire on 28.3.1995 after deducting salvage amount and other deductibles. The Complainant gave its consent on an understanding being given by the opposite party that the claim would be settled very soon. In spite of the said undertaking given by the opposite party, they did not settle the claim and thus failed to honour its commitment. After prolonged correspondence by the Complainant opposite party by its letter dated 20th August, 1996 wrote to the Complainant that their Competent Authority has approved the claim of the Complainant for fire incidence occurring on 28.3.1995 for an amount of Rs.19,32,919/- only.

3. THE opposite party withheld sanction for the remaining amount of Rs.8,45,665/-, though it was recommended for sanction by the Surveyor. Further, the opposite party raised another objection, saying that it had inadvertently made a short recovery of the premium for the year 1995-1996 by an amount of Rs.1,73,044/-. The opposite party proposed to deduct this amount from Rs.19,32,919/-, and offered to pay an amount of Rs.17,58,875/- only towards the claim for the loss resulting from the first fire. Thus, to put it shortly, the opposite party no where agreed in writing on 19.6.1995 to settle the claim at Rs.27,49,065/-, reduced it ultimately to Rs.17,58,875/-. The Complainant, refused to accept the amount. Hence, the complaint was filed. This Commission, by the interim order dated 22.10.2003 directed the opposite party to pay agreed amount of Rs.17,58,875/- as it was undisputedly payable by them. Accordingly, opposite party paid this amount in November, 2003.

4. THIS Commission, by an interim order dated 30.03.2006 directed the opposite party to re-examine the additional claim of Rs.8,45,665/- recommended by the Surveyor which was not sanctioned by the opposite party as regards the first fire on 28.3.1995. However, as the first Surveyor expired, opposite party appointed another surveyor to examine this claim. The second Surveyor recommended that this claim should be settled at Rs.6,23,202/-. By an interim order dated 30.3.2006, this Commission directed that this undisputed amount be paid with interest at 10% p.a. from 1.10.1995. Accordingly, opposite party paid this amount with interest in May 2006. It may be mentioned that as regards the second fire which occurred on 1.4.1995, the opposite party vide their letter dated 20.8.1996 agreed to settle the claim at Rs.4,88,260/- and the Complainant is agreeable to the same. However, this amount was not paid immediately to the Complainant as he disputed the other sanctions. By an interim order dated

22.10.2003 this Commission directed the opposite party to pay this undisputed amount. Accordingly, an amount of Rs.4,88,260/- was paid by opposite party in November 2003. From the facts stated above, it is clear that: (i) the Insurance Company paid Rs.17,58,875/- in November, 2003 on the basis of the order passed by this Commision; (ii) secondly, it paid Rs.4,88,260/- in November, 2003; (iii) thirdly, it paid Rs.6,23,202/- in May, 2006, with interest at the rate of 10% p.a. from 1.10.1995.

The questions which require consideration are (a) with regard to payment of interest thereon, and (b) with regard to wrong deduction of Rs.1,73,044/- on the ground of deficient payment of premium.

5. THE deductions made by the opposite party can be summarized as follows : I. Claims recommended and accepted : (i) First claim as accepted and recommended by both 1st Surveyor and Complainant: Rs.27,49,065/-. The above claim was against first policy. (ii) Second claim : Rs.4,88,260 " Full paid (iii) Total of both the claims = Rs.32,37,325/- Thereafter the following amounts were paid : II. Amounts received by way of interim orders: A. Rs.17,58,875/- by order dated 22.10.2003, being undisputed. B. Rs. 4,88,260/- by order dated 22.10.2003, being undisputed, i.e. Rs.22,47,135/-. This payment was received in November 2003 without interest. C. Rs.6,23,212/- by order dated 30.03.2006 with interest @10% p.a. from 01.10.1995. This payment was received in May 2006 with interest. III. Deductions: A. Deduction proposed by the Insurance Company in its written version of submissions stating that the premium was short charged in the previous year 1995-96 Rs.1,73,044/- B. Amount not considered by the second Rs.2,22,453/- Surveyor ----------------- Total Rs.3,95,497/- ----------------- IV. Points for consideration of Commission: i. Deduction proposed by Insurance Co. " Rs.1,73,044/-, for short payment of premiums is it tenable. ii. What should be the rate of interest to be given on undisputed claim amount of 1st claim of Rs.17,58,875/- from 28.03.1995 to November, 2003? iii. What should be the interest on undisputed claim amount of 2nd claim of Rs.4,88,260/- from 01.04.1995 to November 2003? iv. Difference of interest at the bank rate and 10% on the amount of Rs.6,23,212/- from 01.10.1995 to April, 2006. v. Should the amount of Rs.2,22,453/- recommended by the First Surveyor but not recommended by the second Surveyor be released? vi. Cost of the proceedings.

6. LEARNED Counsel for the Complainant has placed on record, a chart showing the rates of interest charged by the Bank during the period 1.3.1995 to 31.3.2004. During this period the interest rate ranged from 15.80% to 20.75%. The average rate comes to 18.275%. We have considered all the arguments placed by both the parties and came to the following conclusion after considering the six points as mentioned earlier. (i) The deduction of Rs.1,73,044/- was done for no fault of the Complainant. He paid the entire premium amount originally demanded by the opposite party. The opposite party says that its offices have made an inadvertent mistake in levying a wrong rate of premium and it appears

that this mistake came to be noticed at the time of audit of the accounts of the opposite party. Irrespective of the merits of this matter, there is no justification of linking up the matter of short payment of premium with the insurance claim. The opposite party is ordered to pay this amount of Rs.1,73,044/- and it would carry an interest of 18% from 1.4.1995 till the date of payment. (ii) and (iii) These amounts of Rs.17,58,875/- and Rs.4,88,260/- would carry an interest rate at 18% p.a. from 1.4.1995 to 1.11.2003 respectively. (iv) On the amount of Rs.6,23,212/- additional amount of interest at the rate of 8% from 1.10.1995 to April, 2006 shall be paid. The rationale for the decision of awarding interest on points (ii), (iii) and (iv) is that the Complainant has been deprived of the amounts due to him and he had to borrow from the bank at heavy rate of interest. (v)(a) However, regarding the deduction not considered by second Surveyor amounting to Rs.2,22,453/- the deduction relating to point (a) alleged loss of calendar roles and felt roles rubber valued at Rs.1,95,000/- as invoice is produced prima facie shows that these purchases were made subsequent to the fire as stated in Annexure " 3, a detailed explanation is given herein below: (b) As regards Rs.27,453/- claimed as man power lost as no details were produced by the Complainant, the Surveyor gave explanation in Annexure " 3 which is given herein below : "Shift Incharge and Skill Worker: Loss of Manpower shall be calculated by the insurance company itself, or the original surveyor we are not able to trace out the hour loss due to fire." These deductions made by the Surveyor seem reasonable on the face of the record itself and we disallow these claims (a) and (b). As for point (vi) we allow cost of Rs.10,000/- considering the fact that the Complainant has pursued the matter for so many years. In the result, the complaint is allowed. The Insurance Company is directed to pay : (i) the amount of Rs.1,73,044/- with interest at the rate of 18% p.a. from 28th March, 1995 till its payment; (ii) interest on the sum of Rs.17,58,875/- and Rs.4,88,260/- at the rate of 18% p.a. from 1st April, 1995 till 1st November, 2003;] (iii) the difference of interest, i.e. at the rate of 18% p.a. on the amount of Rs.6,23,212/- from 1.10.1995 to 1st April, 2006.

It shall also pay Rs.10,000/- as costs to the Complainant.

