(1993) 05 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

FINE CHEMICAL PRODUCTS APPELLANT

Vs

Divisional Manager, National Insurance Co. Ltd. RESPONDENT

Date of Decision : 29-05-1993

Acts Referred:

Citation : 1993 2 CPR 595 : 1993 3 CPJ 1475

Hon'ble Judges : G.G.Loney , Atanasio Monteiro , Subhalakshimi Naik J.

Final Decision : Complaint allowed with costs

Judgement

1. THIS complaint is as regards deficiency in service of OP for not settling complainant''s claim expeditiously and with reasonable approach. Shortly stated facts are that the complainant, Mr. Girish S. Shirwaikar is a highly qualified entrepreneur in the chemical production and has started his own concern under his own proprietorship styled as "M/s. Fine Chemical Products (India)." The proprietory concern of the complainant manufactures a important substitute fine chemical viz. Propargyl Bromide for supply to M/s. Glaxo India Limited in Maharashtra. The complainant has to use Propargyl Alcohol and Liquid Bromine as the major raw material to produce aforesaid chemical substitute. The aforesaid two elements constitute at least 80% of the total material value during such manufacture of finished chemical goods. The complainant alleged that because of high value of aforesaid raw material and in order to overcome his financial limitation, arrangement was made with M/s. Glaxo India Limited to supply these two high value major raw materials to the petitioner for their conversion to Propargyl Bromide under agreed terms and conditions. Under the said agreement, complainant supplies entire manufactured good i.e. Propargyl Bromide to M/s. Glaxo India Limited. The complainant had explained all these facts and circumstnaces to Mr. Sardessai, the them Branch Manager of National Insurance Company Limited, Vasco-de-Gama who was stationed there at the material time. Having satisfied with the complainant''s arrangements & requirements, O.P. provided insurance cover to the complainant''s factory for a total value of Rs. 9,25,000,00 O.P. issued fire policy for the aforesaid amount to the complainant for a period of 12 months from 18-5-1990 to 17-5-1991. On

17-6-1990, a major incident of fire occurred in the complainant''s factory as a result of which, complainant''s factory building with electricals, glass apparatus and parts and stock and stockin-process including the materials supplied by M/s. Glaxo India Ltd., were damaged.

2. THE aforesaid incident was reported by the complainant to the O.P. at their Branch Office at Vasco-de-Gama on 19-6-1990. THE claim for compensation was submitted by the complainant to the O.P. informing loss of Rs. 4,62,212.00. O.P. got complainant''s damage surveyed through one Mr. M.V. Kriplani, Authorised Surveyor. After detailed survey, Mr. M.V. Kriplani assessed complainant''s damage and loss and agreed to accept complainant''s claim for the loss of Rs. 3,71,112.00. It appears that the surveyor directly entered into correspondence with M/s. Glaxo India Limited as regards stock of Propargyl Alcohol and Liquid Bromine which were in the stock of complainant and was perished in fire. M/s. Glaxo India Limited informed the surveyor that they had not insured their stock lying with the complainant (Surveyor, therefore, referred the matter to his competent authority to approve complainant''s claim for Rs. 1,57,995.00 minus the stock of raw material. THE complainant, therefore, alleged in this complaint that services of O.P. in deciding complainant''s claim excluding the stock of raw material supplied by M/s. Glaxo India Limited was not only delayed but his claim has been reduced for irrelevant and unnecessary reasons. O.P. opposed complainant''s claim on the ground that stock of raw material supplied by M/s. Glaxo India Limited was not insured. We have heard Mr. Ajit Kantak, Advocate for the complainant and Mr. E. Afonso, Advocate for O.P. The following points arise for our consideration : 1. Whether there has been deficiency in the service O.P.? 2. Whether as a result of deficiency in the service of O.P. complainant suffered any loss? It is an admitted fact that complainant''s factory was granted a cover of Rs. 9.25.000.00 covering the risk of fire. It is, therefore, obvious that the complainant has been a consumer of a service of O.P. It is also not disputed that the complainant''s claim was surveyed by surveyor and had recommended complainant''s claim for Rs. 3,71,112,00. The only disputed point to be considered is as to whether the O.P. is justified in reducing complainant''s claim from Rs. 3,71,112.00 to Rs. 1,57,995.00. In our view, the stand taken by O.P. for reducing complainant''s claim is not correct and justified. Perusal of insurance policy show that O.P. has issued a fire policy in favour of complainant to cover the loss of two shades, glass apparatus accessories, electrical installations and fittings, stock and stock-in-process/trade consisting of various types of acids such as sulphuric acid, Hydrocholric Acid, Bromine, Red Phosphorus Acitic acid and other similar products and finished products consisting of various fine chemicals owned by the complainant and whilst being and or operated and used at insured''s fine chemical manufacturing unit of class ''A'' construction and situated at Potrem, Bhatim, Sanguem-Goa. Reading of description of property and goods insured does not make distinction that raw material and the two chemical elements of Propargyl Alcohol and Liquid Bromine are excluded from the policy. On the contrary, Clause ''D'' of the property clearly describes that

whatsoever stock of material in process and trade consisting of various types of acids, and chemicals has been insured. Therefore, even the stock supplied by M/ s. Glaxo India Limited to the complainant for conversion of finished products lying in complainant''s factory is covered under the aforesaid policy. Complainant''s arrangement with M/s. Glaxo India Limited has been very clearly stated by him in his complaint. The complainant has clearly stated that he was supplying finished products from his factory to M/s. Glaxo India Limited alone and not to any other establishments. It is also clearly demonstrated by the complainant that Propargyl Alcohol and Liquid Bromine were forming 80% of the raw material in the finished products and, therefore, once those two materials were placed with the complainant''s premises, they are deemed to be stock-in-trade for use in the process of production. Moment the raw materials from M/s. Glaxo India Limited kept in complainant''s premises, it becomes the stock-in-process of complainant irrespective of the fact that it was not insured by M/s. Glaxo India Limited. The complainant has alleged in his complaint that he had explained all these circumstances to Mr. Sardessai, the then Branch Manager of O.P. Thus the complainant having explained all the circumstances regarding his business and stock to be insured, the O.P. is deemed to have accepted all the circumstances to extend the insurance coverage to the complainant even to the stock & stock-in-process supplied by M/ s. Glaxo India Limited. We, therefore, see no reasons why the O.P. should refuse complainant''s claim when complainant has provided insurance coverto stock-in-process, although M/s. Glaxo India Ltd., has not separately insured it.

The complainant has filed his affidavit in support of his allegations. O.P. filed written version under the signature of Mr. M.B. Muchandi, Divisional Manager. As regards allegations of the complainant that he had explained all these circumstances to the then Divisional Manager, Mr. Sardessai has not been controvered by the O.P. by filing a affidavit of Mr. Sardessai. O.P. has not supported its reply by filing any affidavit to rebut these allegations. There is simple denial by the O.P. in para 3 of its written version but no evidence has been lead in the nature of affidavits. It is, therefore, obvious that the O.P. did not properly appreciate and read the terms and conditions of the Policy in question as regards the insurance cover provided to the stock-in-process lying in the complainant''s factory at the time of incident of fire. Considering the arrangements between M/s. Glaxo India Limited and the complainant, stock of two raw materials mentioned above requires to be considered for purposes of assessment of loss as stock-in-process as per the conditions of the Policy in question. Under these circumstances, we find that O.P. was deficient in its service in as much as correct approach was made while considering the loss caused in the fire in question.

3. THE complainant has claimed that he has suffered loss of Rs. 4,62,212.00. In view of our discussion in previous paras, we find the complainant''s claim has been wrongly undervalued. We, therefore, find that O.P. has unreasonably and arbitrarily reduced the complainant''s claim and delayed its settlement which

obviously caused him financial loss. It is, further, found that the loss caused to the complainant is as a result of negligence in the service of O.P. inasmuch as correct approach has not been made while assessing complainant''s loss by the O.P. and hence, in our view, complainant deserved to be compensated for the loss suffered by him. Hence, we pass the following order. ORDER We allow this complaint. THE O.P., National Insurance Company Limited,. Vasco-de-Gama is directed to settle complainant''s claim for Rs. 3,71,112.00 with 18% interest from 1-10-1990. THE complainant also be paid Rs. 2,000.00 towards costs and expenses. THE aforesaid amounts be paid to the complainant within 30 days from the receipt of this order failing which the entire amount shall carry interest @ 18% per annum till realisation. Complaint allowed with costs.

