(2012) 08 NCDRC CK 0054

In the National Consumer Disputes Redressal Commission

Frontier Remedies — APPELLANT

Vs

SARASWAT CO-OPERATIVE BANK LTD , Bajaj Allianz General Insurance Co Ltd — RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 469 : 2012 3 CPJ 653 : 2012 3 CPR 533

Hon'ble Judges : V.B.Gupta , Vinay Kumar J.

Advocate : Kumar Akshay

Judgement

1. THIS case is of a proprietorship firm in Aurangabad engaged in manufacturing of bulk drugs. There stocks were covered under an insurance policy provided by the respondent/ Bajaj Allianz General Insurance Company Ltd. The claim under the policy arose due to a factory fire on 9.2.2007. However, the respondent/ insurance company repudiated the claim on 3.9.2007 on the grounds that false documents have been submitted by the insured/Complainant to obtain benefits under the policy. The consumer complaint filed by M/s. Frontier Remedies has been dismissed by the Maharashtra State Consumer Disputes Redressal Commission, in Complaint Case no.8 of 2008. Therefore, the present appeal has been filed challenging the order of the State Commission.

2. THE case of the Complainant before the State Commission was that:- "The complainant says that, on 03/09/2007 the opponent no.1 issued letter to the complainant, contending the rejection of the claim. While rejecting the claim the opponent no.1 has not taken any heed to mention the specific reasons, only it is contented that, the surveyors finding confirmed that false documents had been submitted by the complainant to obtain benefits, and all the benefits under the insurance policy forfeited as per general policy terms and conditions, and condition no.8. The opponent has never taken heed to give the details about the fake documents. It was no where mentioned that which documents are false, fabricated, and made by the complainant, and if the opponents had come to the conclusion that any document is false then why not any criminal complaint is

filed against the culprits. The opponent wanted to escape from the liability, therefore the opponent tried to ignore the claim of the complainant. It is the duty of the Insurance Company to clarify their consumer about the detailed reasons of the rejection of the Insurance claim."

3. PER contra, the case of the respondent/insurance company was that they had appointed a Surveyor to look into the claim and later appointed a second Surveyor, as it was necessary to conduct the survey through an expert in costs and accounts. The second Surveyor Mr. J.C.Bansali found the claim of the Complainant included in the bills and invoices totaling Rs.14,43,300/- for supply of raw materials to be doubtful. It is stated in the written statement of the respondent/insurance company before the State Commission:- "That, the Surveyor Shri J.C. Bansali cross-checked all the bills/invoices of the stock alleged to have been stored by the complainant. During scrutiny, it was noticed that, the invoice in respect of Suman Enterprises is doubtful; therefore, it was further investigated. The Surveyor visited the address mentioned in the tax invoice of Suman Enterprises. He noticed that, no such address is available or no dealer with same name and business was available. Further the mobile numbers mentioned on the invoice were fake and not working. Thereafter, Surveyor made the search on the basis of the VAT and CSP numbers mentioned on the invoice, however, all those numbers found to be fake. Thereafter, Surveyor issued correspondence through Post as well as Courier at the address mentioned on said invoice. All the correspondence returned unserved with endorsement not found. Thereafter, the Surveyor checked all the firms registered with Sales Tax Department in the name and styled as ''M/s. Suman Enterprises'', however, no such registration of firm was found. As a last resort the Surveyor enquired about said Suman Enterprises with the other persons or firms engaged in the business of chemical suppliers, however, it was noticed that, no such firm is known to anybody. Thereafter, the Surveyor called upon the complainant to show the details of payments made to the firm namely M/s Suman Enterprises against said invoice, however he failed to furnish the same. Thereafter, the Surveyor called upon complainant to furnish the details in respect of said M/s Suman Enterprises along with proof like details of payments made /payment made to said firm, bank account statement to show payment of amount, VAT returns, excise returns, explanation for the difference of amount of purchase and sales and stock as per tock statement, the details of products being manufactured at the time of fire and details of orders against which manufacturing was done at the time of fire. The complainant could not furnish the about said details. It is clear from all the above circumstances that, the complainant has furnished the false invoice of Rs.14,43,000/- for purpose of getting excessive and exorbitant claim. The complainant is guilty of obtaining fraudulent means."

4. BY placing the above facts before the State Commission, the respondent/ Insurance company had discharged its primary burden of proof. Thereafter, the appellant /complainant had, not only an opportunity but also an obligation to lead evidence in support of his claim that raw materials worth Rs.14,43,300/-

were actually purchased from a company existing and functioning, at the address given by him, in the name and style of Suman Enterprises.

5. THE impugned order refers to a list of 12 documents produced on behalf of the complainant. None of them relate directly to the issue here. The State Commission has also referred to the arguments of the OP''s counsel and to the rejoinder affidavit of the complainant on this issue. The stand of the complainant was that if the insurance company found that M/S Suman Enterprises was not in existence it should have taken action against the concerned. This response does not help the case of the complainant in any manner. The State Commission therefore held that repudiation of the claim by the insurance company was legal and proper.

6. FROM perusal of the revision petition itself, it is seen that it is totally silent on what evidence was led before the State Commission on the question of existence of M/s. Suman Enterprises and acceptability the bills raised by them on the Complainant. Instead, the revision petition has chosen to go into peripheral issues like justification for appointment of the second Surveyor. The appellant/ Complainant has confined itself to raising a question that, having raised the plea of fraud, it was for the insurance company to prove it. This stand of the appellant/ Complainant amounts to completely ignoring the material placed before and considered by the State Commission in relation to M/s. Suman Enterprises.

7. MR. Kumar Akshay learned counsel for the appellant/ Complainant relied only upon the reply affidavit of the Complainant before the State Commission. In para 10 of this affidavit, reference is made to the receipts of Batco Road Lines Corporation about delivery of the raw material from Bhiwandi. It is argued that it was not necessary for the Complainant to check the number of M/s. Suman Enterprises. The plea taken therein is that the purchaser is not liable if the bill is found to be a fake. The investigator should have checked who committed the forgery. This argument is at behest an attempt to deflect the issue and nothing more. The appellant cannot be permitted to first make these bills a part of his claim under the policy and then throw the responsibility on the insurer.

8. FROM a perusal of the records and from the arguments of the learned counsel, it is more than clear that no evidence was led on behalf of the Complainant before the State Commission to establish that goods worth Rs.14,43,000/- were infact supplied by an existing producer by the name M/s. Suman Enterprises and had physically been received by the Complainant. We therefore, hold that the decision of the State Commission is based upon correct appreciation of the evidence before it and that the appellant has failed to make out any case against the impugned order.

9. FOR the reasons detailed above, First Appeal No.75 of 2012 filed by M/s. Frontier Remedies is dismissed. Considering the facts and circumstances of this case, we also deem it proper to impose a cost of Rs 25,000 on the appellant. The same shall be paid to the respondent within three months.