(2012) 01 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Gajanand Elastic Industries APPELLANT

Vs

New India Assurance Co. Ltd. and Ors. RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Citation : 2012 1 CPJ 451

Hon'ble Judges : S.K.NAIK J.

Judgement

1. SHRI Gajanand Elastic Industries, a partnership firm, is in the business of manufacturing mainly Woven Narrow Fabrics and for that purpose it has a factory at Plot No. 459, GIDC -II, Dediyasan, Mehsana (North Gujarat). In order to safeguard its plant, machinery, equipment and stocks, it has obtained two insurance policies, one Fire Policy ''C for a sum of Rs. 41,00,000 for Building, Plant and Machinery, Accessories and Furniture through the Gujarat State Financial Corporation and the other Fire Policy ''C for a sum of Rs. 10,00,000 for Stocks and Stock -in -Process through the Dena Bank, Mehsana Branch. During the validity of the policies, there was an accidental fire in the factory premises on the 7th of November, 1999 destroying the entire equipment, accessories, stock and furniture. Shri Gajanand Elastic Industries had filed their claim amounting to Rs. 51,00,000 before the New India Assurance Co. Ltd., opposite party No. 1, who vide their letter dated 7th of August, 2000 have repudiated the same. Aggrieved thereupon and alleging deficiency on part of the opposite party No. 1 - Insurance Company that this complaint has been filed seeking for a direction to the opposite party -Insurance Company to pay the total insured value of claim amounting to Rs. 51,00,000 (subsequently reduced to Rs. 48,05,723 at the time of filing of rejoinder) along with 18% interest from 8th of May, 2000 till its realization, besides the cost of proceedings as well as special compensation towards mental torture and agony.

2. THERE is no dispute with regard to the issuance of the policies and their validity. The occurrence of the incident of fire on the 7th of November, 1999 too is admitted. With regard to the rest of the issues such as whether the fire was

accidental or engineered, whether the entire building, machinery, accessories and stock was completely destroyed in the fire, and whether the complainant indeed had stocks as claimed on the fateful day are the questions that arise for adjudication in this complaint. After the issuance of a notice on the complaint to the opposite parties, written version has been filed only by the opposite party No. 1 -Insurance Company. Since opposite party No. 2 and opposite party No. 3, the Gujarat State Financial Corporation and Dena Bank respectively, were the financier to the complainant and the insurance policies in fact have been obtained by them on the account of the complainant, their role as a matter of fact was that of a co -complainant but for reasons best known to them, they have not joined the complainant. Opposite party No. 2 -Gujarat State Financial Corporation, however, have filed an affidavit with an application stating therein that the complainant has availed financial assistance by way of term loan and had become a defaulter, thereby forcing them to take possession of the factory premises stating that an amount of Rs. 40,33,873 is outstanding against the complainant as on 1st of May, 2002. In the event of allowing the complaint, they pray that opposite party No. 1 -Insurance Company be directed to pay the awarded amount directly to them.

3. IN the written version submitted by opposite party No.1 -Insurance Company, while raising a preliminary objection that the complainant has not come up with clean hands and has suppressed material facts, it has been submitted that the fire was not accidental due to ''short circuit'' but was ''man -made''. Extensively quoting from the final report of the surveyor M/s. Kirj Consultants, it has been averred that the whole episode is an attempt by the complainant to get rid of the damaged stock and defective machines at their cost. It has been emphatically denied that the complainant had incurred a loss of the total insured value of Rs. 51,00,000. It has also been stated in the written version that the report of the Forensic Scientific Laboratory, Ahmedabad cannot be said to have given a categorical finding as to the cause of the fire. Opposite party No.1 -Insurance Company has also highlighted that as per the report of the surveyor, fire in the factory premises was "scattered at different places i.e. it was near the machines and in godown. Office premises and its furniture and colour were not affected due to fire. Normally, fire only travels by line and does not have scattered marking". Finally, it has been contended that the complainant was suffering losses continuously from the preceding four years and the alleged incident of fire was engineered to derive undeserved gain from opposite party No. 1 -Insurance Company to cover up the business loss. Claiming that the claim was a fraud being perpetrated on them, they justify the repudiation as per Clause 8 of the terms and conditions of the policy. It has, therefore been prayed that the complaint be dismissed with cost.

4. IN the rejoinder to the written version of the Insurance Company, the complainant has reiterated the assertions made in the complaint. Apart from the rejoinder, in which an affidavit of one Ramavatar Agrawal, Proprietor of R.D. Impex has been annexed, the complainant filed no other affidavit in evidence.

Opposite party No. 1 -Insurance Company on the other hand have filed an affidavit of Mr. P.K. Parmar, their Divisional Manager. Subsequently at a later stage they have filed an application seeking permission of this Commission to file the affidavit of the preliminary Surveyor Rajendra S. Joshi, Surveyors, Loss Assessor and Valuer and that of the final Surveyor M/s. Kirj Consultants. Even though the complainant has objected to the filing of the affidavits of the surveyors as evidence at such a belated stage, we permitted the said affidavits to be taken on record, as not only the opposite party -Insurance Company but also the complainant have relied upon some or the other part of the report submitted by the said surveyors and we consider it appropriate in the interest of justice to refer to the said affidavits. We have heard Mr. S.J. Mehta, learned Counsel appearing on behalf of the complainant, and Ms. Pankaj Bala Varma, learned Counsel for the opposite party -Insurance Company and have also perused the evidence on record.

5. LEARNED Counsel for the complainant has argued that this was a case of accidental fire discovered by his employee Shri Solanki due to a short circuit. For the cause of fire being short circuit he relies upon the report of the Forensic Science Laboratory. He denied the plea of the opposite party -Insurance Company that the Managing Partner Mr. Bharatbhai Parmar ever made any statement before the preliminary surveyor that on the 6th of November, 1996, when the factory was closed for Diwali, he had switched off the main switch. This argument has been advanced to counter the basis on which the second Surveyor M/s. Kirj Consultants have opined that the main supply having been switched off, there was no possibility of any fire due to a short circuit.

6. WITH regard to the allegation that the complainant did not fully cooperate and provided the necessary material/documents, learned Counsel for the complainant contends that the complainant had furnished the entire books of accounts/bills/invoices, bank statements, excise records, quotations for purchase of new machineries, income tax and sales tax details, as desired by the Surveyor. This is borne out from the correspondence exchanged between the parties. The complainant went even to the extent of requesting the surveyor and the opposite party -Insurance Company to appoint an investigator if they were of the opinion that the complainant was hedging or making any false claim but the opposite party -Insurance Company never appointed any investigator. Relying on the report of the preliminary Surveyor, the learned Counsel contends that the report and the photographs fully substantiate that the plant, equipment and machineries as also the stocks were completely destroyed leaving no manner of doubt that the complainant had suffered huge loss. On the question of the complainant suffering losses during the preceding four years, learned Counsel for the complainant contends that the loss or profit by the company is neither the main feature of the policy to decide the claim nor is it relevant and has explained that it was due to recession in the market that not only the complainant -company but the entire industrial sector had suffered loss and has quoted the case of established textile companies, like Arvind Mills, Hindustan Motors, etc.

with some of them having reduced their production.

7. ON the point of the Surveyor making a big issue about the truthful disclosure of the complainant that he had a stock of defective goods to the extent of Rs. 12,50,200, learned Counsel for the complainant submits that this was an honest declaration of the goods returned by their buyers and he has, therefore, reduced the value thereof from his claim. Rather than giving credit for this honest and correct declaration, the Surveyor has made out a case to paint a picture as if the complainant had resorted to clever manipulation to give the ''appearance'' of a true disclosure of the stock. Learned Counsel further contends that the attitude of the final Surveyor was negative from the very beginning and the opposite party -Insurance Company has erroneously relied upon the report of the Surveyor with a prejudicial attitude to defeat the genuine claim of the complainant. In support thereof, he has referred to the allegation of the Surveyor that the purchase bills of M/s. R.D. Impex were tampered, which stands falsified from the affidavit of Shri Ramavatar Dwarkaprasad Agrawal, the proprietor of M/s. R.D. Impex, who in his affidavit has clearly stated that the Surveyor has given absolutely false and misleading reason. In short, the learned Counsel has made out a case of natural, accidental fire simplicitor resulting in the total damage to the building, machinery and the stock and has contended that just to frustrate the genuine claim of the complainant, the opposite party -Insurance Company has resorted to Clause 8 of the policy, which is totally arbitrary and unjustified and has prayed that the repudiation be set aside and his claim which is limited to the insured value only be allowed even though he has suffered loss to the tune of Rs. 72,00,000 as against Rs. 51,00,000 of total insurance.

8. LEARNED Counsel for the opposite party -Insurance Company on the other hand has reiterated their stand as enumerated in their written version and has contended that the chain of events and circumstances as brought out by the final surveyor in his report conclusively point at the incident of fire being not natural but ''man -made''. He also draws support from the report of the Forensic Science Laboratory that the said report does not conclusively state that the fire originated due to a short circuit, In fact, it leaves a question -mark and casts doubt on whether the lumps on the fuse cutters resulting from the melting of the wires originated before or after the incident of fire. Referring to the losses suffered by the complainant during the preceding four years and the accumulation of the defective stocks and further contending that even the machines were defective, the complainant has lodged this false claim to cover up his business losses and, therefore, there was a clear breach of condition No. 8 of the terms and conditions of the policy. She has, therefore, prayed that the complaint be dismissed with cost. From the records, we find that a fire in the factory of the complainant had broken out probably at 6.30 p.m. on the 7th of November, 1999, which was discovered only at about 7.00 p.m. when Shri Solanki, the operator/employee of the complainant, returned from the Mehsana City along with his sister after Diwali purchases. He thereafter goes to a neighbouring National Oil Mills and informs the owner Bharatbhai Parmar. As per

his own statement before the Police Sub -Inspector (page 65 of the paper -book), the owner and his partners reached, the factory premises within 20 minutes and they in turn went to the nearby oil mills and inform the fire brigade and Mehsana Police Control Room about the incident. It is not understood as to why the operator/employee of the complainant did not simultaneously inform the fire brigade at the first instance while informing the factory owner. Surprisingly even the owner does not immediately inform the fire brigade nor does he instruct his employee to call for the fire brigade assistance. While as per his own statement, the factory owner reached the factory premises within 20 minutes and then approached the fire brigade and police station, the statement recorded in the FIR lodged before the police on the 7th of November, 1999 itself, a translated copy of which is at page 64 of the paper -book, it has been stated that it was only at 20.15 p.m. that Shri Solanki informed the police with regard to the fire inside the complainant''s factory premises. The FIR being relevant is reproduced below: Date: 7.11.1999

Sunday

Police Station: Mehsana Taluka, District: Mehsana, Date: 7.11.1999

9. AS would be seen from the above DD Entry of Police Station, it was Shri Solanki who informed the police with regard to the incident of fire only at 8.15 p.m. and it was the PSO who informed the ONGC Fire Brigade, Nagarpalika Fire Brigade and the electricity authorities for further action. Thus, it appears that from 6.30 p.m. to 8.15 p.m. no worthwhile action was taken either by Shri Solanki or even by owner of the factory Bharatbhai Parmar to ensure that prompt and immediate actions were initiated to control the fire. From the reports of Executive Engineer, Fire Brigade Branch, Mesana and Mehsana Municipality available on pages 62 and 63, it transpires that their fire tenders were able to douse the fire were able to douse the fire within two hours, which means that most of the damage had already occurred by the time the fire tenders would have arrived at the spot. These circumstances lend support to the plea of the opposite party -Insurance Company that it was not an accidental fire. This is further fortified from the fact that the fire had occurred selectively in a scattered manner and not in a linear fashion, which has not been convincingly refuted by the complainant. This will indicate the possibility of human intervention in the episode.

10. FURTHER , the report of Forensic Science Laboratory, Ahmedabad while not ruling out the possibility of a short circuit have stated that "It is not opined that the said short circuit has taken place before or after fire." The said laboratory has arrived at this conclusion because they found that the fuse cutters scattered at the site had melted and there were lumps at the ends. The lumps can be formed due to heat, which may generate even after the occurrence of fire and, therefore, this opinion of the Forensic Science Laboratory is not conclusive and cannot be taken as a proof of short circuit. Thus, going by the discrepancies in the statement of Shri Solanki recorded before the police and the fact that even in his

first statement on the day of the occurrence he had given full details of the place/ spots where the fire had occurred and stated that the factory is totally burnt and nothing remained in a condition of reuse. He has even quantified the loss due to fire at Rs. 61,00,000. This kind of a statement on a very day of incident, when even the fire had not been fully controlled/doused, arises suspicion with regard to the genesis of the incident. Interestingly, while Shri Solanki in his statement given to the police on the date of fire stated that he had gone to Mehsana City for Diwali purchases with his sister, the statement of his wife Ratuba given before the police on the next date of the incident i.e. on 8th of November, 1999 (page 72 of the paper -book) stated that she and her husband had gone to Mehsana City and they discovered the fire at 7.00 p.m. on their way back home. She even went to state that the entire factory was engulfed in flames and refers to the extent of damage at around Rs. 60,00,000 and also gives the reason of the fire being due to short circuit. This raises serious doubt and it may not be far from the truth to say that the complainant has tried to give the garb of a natural/ accidental fire to what appears to have been ''engineered''.

11. THE circumstances existing on record point towards the preponderant of the probability of a ''man -made'' fire rather than it being accidental. We say so because the complainant has not denied that he had been suffering financial losses continuously for the preceding four years. While he concedes the losses but explains that they were due to recession in the market, there is no explanation as to why on the face of the continuous losses he has been purchasing/producing goods beyond any expected sale or returns. As per his own showing, he had built up an inventory of Rs. 30,00,000 against an annual turnover of Rs. 20,00,000 and an insurance of Rs. 10,00,000. Further, goods worth Rs. 12,50,200 had already been returned by his buyers as defective goods. If the market was facing recession, it does not stand to any prudent business sense that without any firm orders, any factory will resort to aggressive purchase of raw material and will build up huge stock. While incurring financial losses may not be directly linked to the terms and conditions of the policy, in order to arrive at a judicious finding, it is an important link in the chain of events which cannot be ignored. The claim of the complainant that he had submitted all the documents/invoices, etc. before the Surveyor cannot be given full reliance since the complainant has failed to file his affidavit in evidence, in which he could have furnished copies of such documents. The emphasis made by the learned Counsel for the complainant quantifying the loss suffered by the complainant at Rs. 61,00,000 cannot be given any weightage as it was an estimate provided by the witnesses on the claim of the complainant, which at best can be said to be a self -serving document.

12. THAT apart, we also take note of the fact, that the complainant has failed to file the affidavit of Shri Solanki who first discovered the fire nor has the affidavit of the Scientific Officer of Forensic Science Laboratory. The opposite party - Insurance Company on the other hand has filed the affidavits of both the surveyors. Shri Rajendra S. Joshi, the preliminary Surveyor, in his affidavit has

confirmed the contention in his report that the Managing Partner of the complainant factory Shri Bharatbhai Parmar had told him that before locking the factory he had shut (switched off) the power main switch for the sake of safety and then left for his home''. This averment though denied at a later stage cannot be ignored simply on the explanation of the complainant that the main switch could not have been ''turned off as the staff quarters had to be provided with lighting facilities. It has come out from the records that the staff quarters are at the back side of the factory premises and they required only domestic connections and not the kind of power that is required for running the machines / factory. This stand of the complainant is clearly an afterthought one. It would, therefore, be difficult to disbelieve the statement of the preliminary Surveyor which was recorded in the very beginning. Thus, going by the entirety of facts and circumstances emerging from the evidence and chain of events, we are of the view that the incident of fire was not due to short -circuit or accidental and, therefore, the opposite party -Insurance Company was fully justified in repudiating the same under Clause 8 of the terms of the policy. The complaint is, accordingly, dismissed with no order as to costs.

