(2010) 09 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

Ganga Smriti Khadi Sewa Sansathan APPELLANT

Vs

National Insurance Co. Ltd. RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Citation : 2010 0 NCDRC 166 : 2010 4 CPJ 68 : 2010 4 CPR 85

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Satyajit Patra , Pankaj Bala Verma

Judgement

1. AGGRIEVED by the order of the Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow (in short the State Commission) in Appeal No. 1296/ SC/ 1997 - Ganga Smriti Khadi Sewa Sansathan and Ors., through its Secretary Shri Dharmender Tiwari (Petitioner in this case), has filed the present revision petition against the National Insurance Co. Ltd., (Respondent in this case).

2. FACTS of the case according to the Petitioner is that it had applied for a grant of term loan for Rs. 4.00 lakh and CC loan of Rs. 2.00 lakh from the Union Bank of India to set up a hand made paper mill in village Teekhampur. The said mill was insured by the Respondent through Union Bank of India and the amount of premium was deducted by the Union Bank of India from the account of the Petitioner. On 18.02.1996 a major fire broke out in the hand made paper mill causing a loss of Rs.4,03,500/-. The Petitioner informed the fire service who extinguished the fire and assessed the loss at Rs.3,50,000/-. A report with the police was also lodged. On 19.02.1996, i.e. the next date, a report above the fire incident was sent to the Respondent and followed the next day with an Insurance claim. Despite Petitioners repeated attempts both in writing as well as through personal visits to get the claim settled, no action was taken by the Respondent. Petitioner, therefore, issued a legal notice, followed by a complaint before the District Forum on grounds of deficiency of service and seeking the following relief: Payment of claimed amount of Rs.4,03,500/- with 18% interest from the date of fire accident and Rs.5000/- as cost for in convenience etc. The

Respondent in his version has refuted the above contention of the Petitioner and stated that on receipt of information of fire, a surveyor was appointed who concluded after due investigation that the loss assessed by the fire department is inflated and the compensation sought by the Petitioner is excessive and not admissible. In fact, a large number of items including machinery etc., were not damaged in the fire and claims were made in respect of items not covered under the Insurance Policy.

The District Forum after considering the evidence adduced by both the parties concluded as follows: As per the report of the surveyor appointed by the Insurance Company the loss of Petitioner caused in the fire incident is of Rs.2,98,736/- which is accepted by Respondent. The Insurance done by the Respondent is also accepted. The Respondent did not disclose the circumstances in which the payment of said amount of Rs.2,98,736/- as per the report of the surveyor was not made to the Petitioner whereas in this regard the Petitioner visited the office of the Insurance Company so many times and also made correspondence. As such the Petitioner is liable to be decreed against the Respondent.

3. THEREFORE, the Respondent No.1, Insurance Company is directed to make payment of Rs.2,98,736/- i.e. the insurance amount as per the report of surveyor, and litigation expenses of Rs.500/- within one month failing which the Petitioner would be entitled to get the interest at the rate of 18% from the date of filing of the petitioner till the date of payment. Aggrieved by the order of the District Forum, the Respondent filed an appeal before the State Commission. The State Commission while accepting that the Respondent had provided Petitioners insurance cover for Rs. 8.00 lakh which included machinery, accessories, raw material and finished goods etc., modified the compensation awarded by the District Forum to Rs.88,395/-, which was, as per the Surveyors report, the indemnifiable loss, alongwith interest @ 9% per annum from the date of complaint till the date of payment.

4. THE relevant portion of the State Commissions order read as follows: At the very outset Shri Srivastava (learned Counsel for the Petitioner) submitted that the surveyors report and its conclusion of assessment of loss was misread by the learned District Forum and it was argued that according to the surveyors report the indemnifiable loss was Rs.88,395.15 and not Rs.2,98,736/-. Such argument was repelled by Shri Verma, (Counsel for the Respondent) placing reliance on the loss report which was annexed with the Surveyors report which mentioned loss to the tune of Rs.2,98,736/. Over and above, it was argued by Shri Verma that since the surveyor has himself opined that it is not possible to ascertain the quantum of loss, the surveyors report is of no value. Shri Verma also argued that the surveyors report is incomplete; surveyor has not assessed the loss occasioned due to fire about the finished products. Shri Srivastava tried to counter this argument by arguing that the finished products was not subject of contract of insurance. THE contract of insurance was placed before us which

clearly makes out that machineries and accessories were insured for Rs.5,50,000/- and raw material, finished goods were insured for Rs.2,50,000/- and the total sum insured was Rs.8,00,000/-. Thus we find no substance in the argument of Shri Srivastava that the finished goods were not insured but we also find no substance in the argument of Shri Verma that no assessment by the surveyor has been made with regard to the loss occasioned about the finished products. Surveyor in column No. 19, Assessment of Indemnity in its clause (b) has written that as per the item insured covered raw-material but we have covered all the aspects of raw material in the form of work-in-progress and finished stock alone. In column 20 clause (b) it has been mentioned that raw-material included finished stock and work in progress also. Thus the surveyor has assessed the loss about the finished goods and work in progress. So contrary arguments is of no use. THE loss report of the complainant cannot be termed as the loss assessed by the surveyor. So obviously the view of the District Forum is based on a misreading of the surveyors report. Surveyors report in our opinion, is just and proper and surveyor has rightly assessed the loss for Rs.88,395.15. Aggrieved by this order, the present revision petition has been filed by the Petitioner. Learned Counsel for both the parties made oral submissions. Learned Counsel for the Petitioner drew our attention to the Insurance policy taken by the Petitioner from the Respondent which clearly indicates that insurance cover for Rs. 8.00 lakh, includes the following items: Property Details Sum Insured a. Machinery and Accessories Plant and machinery Rs.5,50,000/- b. Stocks Raw-material/ finished goods Rs.2,50,000/- c. Furniture d. Property required to be insured specifically Ciz Compound wall TOTAL Rs.8,00,000/-

The premium worked out was Rs.4413/-. Further, as per the details of inventory prepared by the surveyor the following losses were attributed to the fire: (i) Raw-material Rs.78,300/- (ii) Work in progress Rs.2000/- (Pulp in the tank) (iii) Finished products Rs.1,38,304/- (iv) Accessories Rs.80,132/- Total : Rs. 2,98,736/-

5. IN view of the above facts, it was contended by the learned Counsel for the Petitioner that the conclusion of the Surveyor that finished goods, tools and accessories were not covered under the INsurance Policy, hence, excluded from the assessment is totally incorrect. Therefore, the conclusion of the Surveyor that indemnifiable loss was only Rs.88,395/- which was also accepted by the State Commission needs to be set aside.

6. LEARNED Counsel for the Respondent pointed out that in the Insurance Policy dated 13.11.1995, it is clearly stated that insurance cover was for Rs. 8.00 lakh which included only plant and machinery worth Rs.5,50,000/- and raw-materials worth Rs.2,50,000/-. No mention has been made in this policy document regarding insurance of finished goods. Therefore, the estimated loss of the finished goods amounting to Rs.1,38,304/- was rightly not included in the indemnifiable loss by the Surveyor. Apart from this, there were items destroyed in the fire for which the actual loss could not be verified, because, the Petitioner

had not made available to the Surveyor the necessary books of account, cash memos, registers etc. This was also specifically stated by the Surveyor in his report. Under these circumstances, the surveyor had rightly assessed the loss at Rs.88,395/-, which was also accepted by the State Commission. We have heard the submissions made by the learned Counsel for both the parties and have carefully considered the evidence on record. It is not disputed that the Petitioner had taken a fire insurance policy in respect of his hand made paper mill for Rs.8.00 lakh, with annual premium of Rs.4413/- and there was also no default in the payment of premium. It is also not in dispute that a fire took place in which the Petitioner suffered losses. However, differing views have been put forwarded by both parties, in respect of the Insurance claim. As stated earlier, the learned Counsel for the Respondent while relying on the general insurance document, contended that the insurance policy covered only plant, machinery and raw-material under the heading Subject matter of Insurance. In our view, this document cannot be read in isolation because in the detailed fire policy issued to the Petitioner, (which is attached to the general insurance policy document) it is clearly stated that apart from plant, machinery and raw-material, finished goods and accessories have also been included, as rightly pointed out by the Petitioner. In view of this fact, there is no doubt that the Surveyor has erred in excluding the loss of finished goods while working out the indemnifiable loss. Also the Surveyor erred in excluding the substantial loss caused to tools and accessories in the fire by excluding them and opining that these are not covered either under plant, machinery and raw-material and thus would have to be excluded from assessment. On the other hand, verification of inventory conducted by the same Surveyor, on which the District Forum has based its findings, clearly indicates allthe items insured, also giving details of the quantity and value of each item saved, as well as the losses incurred.

The order of the learned State Commission is somewhat in the nature of a non-sequitor. While agreeing with the Petitioner regarding list of items covered under the Insurance Policy, the State Commission at the same time, also agrees with the Surveyors assessment of the indemnifiable loss (assessed at Rs.88,395/-) which excludes some items clearly covered under the Insurance Policy for example; finished goods. We therefore, find it difficult to accept the reasoning of the State Commission in reaching its conclusion. On the other hand, we are of the view that the order of the District Forum is based on a correct appreciation of evidence and facts on record.

7. IN view of the above, we set aside the order of the State Commission and restore the order of the District Forum and direct the Respondent INsurance Company to make payment of Rs.2,98,736/- and litigation expenses of Rs.500/- to the Petitioner. However, the rate of interest at 18% as ordered by the District Forum is on the higher side and we reduce it to 9% from the date of filing of the complaint till the date of payment.

