**(2004) 05 NCDRC CK 0025**

**In the National Consumer Disputes Redressal Commission**

GENERAL WOOD INDUSTRIES PVT. LTD. APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

**Date of Decision :** 28-05-2004

**Acts Referred:**

**Citation :** 2005 2 CPJ 654

**Hon'ble Judges :** A.Raman , R.Vanaroja J.

**Advocate :** Kiran Rao , M.B.Gopalan

# Judgement

1. THE complainant had insured with the opposite party their building along with construction, compound wall, furniture, fixtures, fittings and electrical installations, generatored, etc., situate at Old Mahabalipuram Road, Oggiam Thoraipakkam, Chennai, for a sum of Rs. 63 lakhs and paid premium of Rs. 14,139/-. THE policy was for a period of one year from 9.1.1996 to 8.1.1997. While so, a major fire broke out in the building on 25.12.1996 causing extensive damage to the building and other insured items. THE complainant reported about the accident to the opposite party who deputed M/s. N. Velayutham & Co. to inspect the factory and assess the damage. THE Surveyor visited the building on 25.12.1996. Subsequently another Surveyor by name M/s. Meticulous Surveyors were appointed as joint Surveyors. THE complainant brought to the notice of the Surveyors that the building had become structurally unsound because of the extensive damage caused by fire. For more than 3 months, the opposite party failed to take any action or respond to the complainant''s oral and written representations and remained silent. THE complainant obtained competitive quotations from two chartered engineers and an architect for reconstruction and submitted to the opposite party in March, 1997. THEre was no response. THE complainant thereafter wrote several letters which all went unheard. Neither the Surveyors nor the opposite party responded to any of the letters. THE fire took place on 25.12.1996 and it was brought to the notice of the opposite party immediately. THE complainant took all necessary steps and was always ready and willing to assist the opposite party. But the opposite party has been adopting an indifferent attitude and there has been abnormal and protracted delay. After 7

months the opposite party obtained an estimate from a chartered engineer Mr. Narayanan who verbally informed the complainant''s General Manager that he has estimated the loss at Rs. 24 lakhs. But the copy which was finally sent to the complainant with a covering letter showed that the estimation of the loss was only Rs. 14,21,315/-. THE complainant immediately wrote letters listing out objections to the figure and further stating that the basis for working out the loss was arbitrary. THE complainant requested the opposite party to attend a meeting with an independent chartered engineer by name Mr. Vijayaraghavan. THE said Mr. Vijayaraghavan has certified that an additional sum of Rs. 5,40,000/- will be required over and above the figures given by the opposite party and this amount was required for the purpose of steel truss, additional beams and steel hoist to strengthen the existing RCC works and epoxy coating of cracks and joining old and new concrete. THE complainant also obtained quotations from M/s. Sree Ram Bakt Services, a B Grade electrical licence holder for a sum of Rs. 5,38,000/- for electrical installations and wiring charges. After protracted delay, the opposite party informed that unless the complainant consented to a particular figure, no amount would be released to them. As the complainant was a small unit facing severe financial difficulty due to protracted delay in settlement, they were compelled to agree to a figure of Rs. 17,79,013/-. This figure was agreed to by the complainant under duress and compulsion. THE failure of the opposite party to send the insurance claim within a reasonable time resulted in the complainant defaulting in its payment to TIIC for whom they have to pay Rs. 50,000/- per month. It was only on 13.7.1997 the opposite party informed the complainant that they are releasing Rs. 17,76,513/-. THE complainant was constrained to sign a voucher accepting the sum in full and final discharge. THE complainant has also sent a letter to the opposite party stating the circumstances under which the payment was received. THE complainant, therefore, prays that for a sum of Rs. 7,22,802/- being the balance along with interest at 18%, a sum of Rs. 2,93,175/- by way of interest on a sum of Rs. 17,76,813/- with compensation of Rs. 5 lakhs.

2. THE opposite party filed a version stating as follows : It is true that the complainant had availed an insurance policy for Rs. 63 lakhs. It is also true that there was a fire accident in their factory on 25.12.1996. THE opposite party appointed two Surveyors to assess the loss and damage. THE complainants were informed to furnish necessary supporting documents. But they failed to do so. THE Surveyors assessed the loss and damage in respect of the building at Rs. 16,19,620/- and in respect of electrical installations at Rs. 1,59,392/-. After the complainant was explained about the basis of assessment, the complainant gave his consent for the Surveyor''s assessment and that the complainant was fully satisfied about the correctness of the assessment. THE complainant gave full discharge and has received the amount in full and final settlement. THErefore, the complainant is estopped from making any claim. THE complainant''s claim was settled within a few days after the receipt of the final report from the Surveyors. THE other allegations made in the complaint are denied. It was the

 

complainant who belatedly submitted the records. THE Surveyors inspected the premises and called for records. It was the complainant who was disputing the assessment in the guise of calling for clarifications. THE Surveyors released the final report on 1.11.1997. THE assessment by Mr. Vijayaraghavan is totally unreliable. He has estimated the damages at Rs. 75 lakhs whereas the complainant himself admits that the proper estimate is Rs. 14,21,315/-. THE quotation for electrical installation cannot also be accepted as the complainant has insured the electrical installations, furniture, fittings, etc. only for a sum of Rs. 3 lakhs, whereas the estimate has been produced for Rs. 5,38,000/-. THE complaint is silent about the consent letter dated 31.10.1997. THE complainant is put to strict proof of the other allegations. THE opposite party, therefore, prays that the complaint be dismissed. The points that arise for consideration are (1) whether there is deficiency in service ?(2) whether the complainant is estopped from making a claim? and (3) to what relief the complainant is entitled?

The Points : The fact that the complainant''s building comprising construction, compound wall, furniture, fixtures, fittings and electrical installations, generator, etc. were insured for a sum of Rs. 63 lakhs is not disputed. It is also not disputed that there was a major fire accident in the factory causing extensive damage to the complainant''s property. It is also clear that the complainant immediately made a claim. Though the Surveyors appointed inspected the property at the earliest, it is admitted by the opposite party that the Surveyors released the final report on 1.11.1997. The numerous letters written by the complainant which have all been marked as Exhibits on the side of the complainant would show that the complainant has been taking every step and has been diligently pursuing the claim. In fact, the complainant has written on 26.12.1996, 13.1.1997, 29.3.1997, 21.4.1997, 30.4.1997, 22.5.1997, 12.6.1997, 23.7.1997, 25.7.1997, 31.7.1997, 18.8.1997, 26.8.1997, 22.10.1997, 31.10.1997 and 21.11.1997. None of these letters have been responded to. There was only one response on 4.1.1997, that too from the Surveyors. Therefore, the contention of the opposite party that the delay was on the part of the complainant and that they failed to submit certain records, cannot be accepted on the face of it. A person who has insured for a sum of Rs. 63 lakhs and whose property was damaged extensively in the fire accident will be only anxious and eager to settle the claim and get as quickly as possible the compensation amount so that rehabilitation can be thought of. Therefore, in such circumstances, the contention that the Surveyors called for certain records from the complainant and they delayed in submitting the same, cannot be accepted at all. On the other hand, the numerous letters written by the complainant to the opposite party would belie the same. M/s. Velayutham & Co. were appointed as Surveyors in December, 1996 while M/s. Meticulous Surveyors were appointed in January, 1997. From January, 1997 to June, 1997 the complainant has been writing several letters requesting for early settlement and also mentioning that the extensive fire had rendered the building structurally unsound and these requests of the complainant have fallen on deaf ears. The complainant thereafter obtained quotations from certain sources. He has submitted quotation obtained from one Mr. Vijayaraghavan, Chartered Engineer and submitted the same. Nearly after 7 months of the accident, the opposite party called for estimates from Mr. Narayanan, Chartered Engineer. He has estimated the loss on a sum of Rs. 24 lakhs according to the complainant. The complainant himself obtained a quotation from an electrical dealer M/s. Sree Ram Bakt Services. Only after 11 months on 31.10.1997, the Surveyors informed about the amount. They have stated that they arrived at an estimate of Rs. 16,19,620/- regarding the building and a sum of Rs. 1,59,392/- in respect of electrical installations. It is on 13.11.1997 the complainant signs the voucher in full and final settlement. Thus there is a failure to settle the claim within a reasonable time. The opposite party have not even cared to respond to the numerous letters of the complainant or even make a part payment subject to final assessment. They are not in a position to explain the delay. It is also not explained as to why the Surveyor who inspected the premises in December, 1996 could file the final report only by 1.11.1997. Thus all these are but glaring instances of deficiency in service. Therefore, it is clear that there is deficiency in service on the part of the opposite party.

3. NOW, it has to be seen whether the complainant is estopped from filing this complaint in view of the voucher given by them stating that they had received the amount in full and final settlement. One has to consider the piquant situation in which the complainant was placed. There was a major fire accident causing extensive damage. The complainant had availed a facility from the Tamil Nadu Industrial Investment Corporation Ltd. (TIIC). The major fire would have definitely rendered the unit defunct at least for some time. Therefore, the complainant would have been pressed hard for financial assistance. He had to pay the instalments to TIIC. Since he had been running the unit, he has to continue to maintain the unit and has to incur necessary expenditure to set right the building ravaged by fire. All these need a lot of money. Though the fire accident took place in December, 1996, the opposite party have been dragging on the matter without making any payment. The complainant has done everything that is expected of them. The correspondence shows that they have been assisting at all times and co-operating with the opposite party. Thus the complainant was cornerd. They had to have some money to wriggle out the piquant situation. In that context by way of final settlement a sum of Rs. 17,76,513/- was offered by the opposite party. Therefore, there was prolonged delay of more than 10 months in settling the claim, the severe financial situation the complainant was facing, the mental agony caused on account of the fire accident and the delay on the part of the opposite party in settling the claim, would have definitely played a great role in persuading the complainant to accept the settlement. That is why the Supreme Court has held in United India Insurance v. Ajmer Singh Cotton & General Mills & Ors., II (1999) CPJ 10 (SC)=VI (1999) SLT 590=1999 (3) CPR 53 (SC), that mere execution of discharge voucher would not always deprive a consumer from preferring a claim with respect to deficiency in service or consequential benefit. If consumers

 

satisfy the authorities under the Act that the discharge voucher was obtained fraud, misrepresentation, undue influence or coercive bargaining compelled by the circumstances appropriate relief can be granted. Mere execution of discharge voucher and acceptance of claim would not stop consumer from making further claim. Here, the complainant has thus been compelled by circumstances, coerced by the lethargy and inaction of the opposite party and pressurized by the attitude in insisting upon accepting the report of their Surveyor, has accepted the settlement. Therefore, in such circumstances, we have to hold that merely because the complainant has received the amount in full and final settlement of the claim, it cannot estop the complainant from making a further claim. The National Commission has also held in a decision in United India Insurance Co. Ltd. v. K. Gangadharan, 2001 (3) CPR 192 (NC) that the consumer complaint cannot be held not maintainable only on the ground that the insured had executed a full and final settlement of the claim. Here, the circumstances speak for themselves. There is a clear deficiency on the part of the opposite party. They have been dragging on the matter. They are not in a position, in the circumstances, to explain the enormous delay. Therefore, hedged in by circumstance which were compelling in nature, the complainant had to accept any payment that was offered by the opposite party. In this case, the consumer has satisfied that the discharge was obtained in a coercive bargaining and the complainant having been compelled by circumstances, had to accept the amount and execute the voucher and, therefore, the complainant is not estopped from making the claim. Now coming to the damages, the complainant has claimed that the loss is to be estimated in a sum of Rs. 24,99,315/-. The independent Surveyor Mr. Vijayaraghavan had certified on 16.8.1997 that an additional sum of Rs. 5,40,000/- will be required to carry out certain essential additional items of work viz., for providing steel truss, additional beams and steel hoist to strengthen the existing RCC works and epoxy coating of cracks and joining old and new concrete. In the circumstances of the case, we accept the report of the said Mr. Vijayaraghavan to hold that an additional sum of Rs. 5,40,000/- would be required and that will be the measure of damages to be awarded to the complainant in addition to Rs. 17,76,513/- received by the complainant. The complainant has claimed a sum of Rs. 7,22,802/- which is the amount arrived at by the complainant by deducting the sum of Rs. 17,76,513/- from Rs. 24,99,315/- as estimated by the complainant. But in the circumstances we have to hold that the complainant will be entitled to only a sum of Rs. 5,40,000/- as additional expenditure as estimated by the independent Chartered Engineer. We do not accept the claim made by the complainant in a sum of Rs. 7,22,802/-. The complainant has claimed a sum of Rs. 2,93,175/- being the interest on the sum of Rs. 17,76,513/-. Of course, there is a delay in settling the amount. Till the amount is arrived at and fixed by the opposite party, the complainant cannot have any legal claim for any fixed amount. Therefore, the claim towards interest in a sum of Rs. 2,93,175/-, in our opinion, cannot be sustained. The complainant has claimed a sum of Rs. 5 lakhs towards mental agony and hardship. Considering the nature of the fire accident, the abnormal delay, and the failure of the opposite party to even respond to the several letters of the complainant, definitely, the complainant would have been put to a lot of mental strain, agony and hardship. Therefore, in the circumstances, we determine the amount payable under this head in a sum of Rs. 50,000/-. Accordingly we hold that the complainant will be entitled to only a sum of Rs. 5,90,000/- in all, with cost of Rs. 3,000/-.

4. IN the result, this complaint is allowed with a cost of Rs. 3,000/-. The opposite party is directed to pay to the complainant a sum of Rs. 5,90,000/-. Time for payment : 2 months. Complaint allowed.

 