(2003) 09 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Ghulam Mohammad Malla — APPELLANT

Vs

New India Assurance Company Ltd. — RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Citation : 2004 4 CPJ 798 : 2005 1 CPR 269

Hon'ble Judges : M.Y.Kawoosa , Jameela Bashir J.

Advocate : N.A.Dandru , M.A.Dar

Judgement

1. SHORN of details complaint reveals that the complainant insured his business premises including all kinds of timber and wooden pillar, sheets and wood with O.P. for Rs. 6.00 lacs for which premium of Rs. 3,360/- was paid. The policy was valid from 20.9.1994 to 19.9.1995. It is alleged that on 22/23 December, 94 Timber Sale Depot of the complainant gutted in fire and total loss was caused to the insured. Complainant raised the claim. O.P. appointed Mr. Sayeed Irfan as preliminary Surveyor who confirmed the occurrence. Thereafter final Surveyor K.P. Sein was deputed to assess the loss. Before the final Surveyor assessing the loss, firstly Ticku Associates was appointed to investigate the matter. They also confirmed the report of the preliminary Surveyor. Thereafter M/s. Ams Consultants were appointed to investigate the loss who submitted their report on 23.11.1997. In this report M/s. AMS Consultants confirmed the plea taken by the O.P. in the written version that the timber depot was gutted in May, 1994 when there was no insurance cover to such deport. According to the report of Mr. Watali on 23.12.1994 though the occurrence took place but timber depot of the complainant was not affected by fire and his name was not included in the list of fire sufferers. Thereafter report of final Surveyor has been received by the O.P. in which the final Surveyor has reported that he agrees with the report of Mr. Watali AMS Consultants that damage has been caused to the subject insured on 23.12.1994 but however he has assessed the loss which is to the tune of Rs. 3.60 lacs. When the matter was not settled the complainant filed the complaint before this Commission. During the pendency of this complaint claim was repudiated by the O.P. O.P. was noticed. O.P. in his written version has taken the

stand that complainant has played a fraud. Basically, he wanted to take benefit of previous occurrence of May, 1994 when the stocks of insurance were not insured. That day complainant suffered a loss regarding the timber. Now he wants to take benefit of the second occurrence which has taken place in the same area after a few months after the first occurrence.

2. PARTIES have led evidence and case diaries were summoned Learned Counsel for the complainant has argued that no fraud has been committed in this case. According to him, not only preliminary Surveyor has confirmed the loss but Fire Services also vide their letters dated 4.5.1995, 4.6.1995 have confirmed the loss. According to the learned Counsel for complainant even Ticku Surveyor/ Investigator also agreed with the report of preliminary Surveyor. He has invited our attention to the police report which has included the name of the complainant as fire sufferer. We have given due consideration to the arguments advanced before us. We are of the view that complainant does not seem to have come with clean hands before this Commission on the ground that it is not only AMS Consultants who after investigating the case have come to the conclusion that complainant has played a fraud. Basically Timber Depot was destroyed in fire on 12.5.1994 when his depot was not insured. Another occurrence took place on 24.12.1994 on which date no loss was caused to the Timber Depot. Communication issued by Director, Fire Services on 18.11.1997 in which the Director has categorically stated that: "I feel that the claim as a matter of fact is false and fabricated one which needs to be turned down until thorough probe."

This gets support from additional fact that admittedly the name of the complainant was not included in the list of fire sufferers nor in the police report. Then the complainant applied to the DIG on 26.12.1995 with the prayer that his name be included in the Fire Sufferers of 24.12.1994 and succeeded after 14 months in getting his name included in the police records. There is no denial to this fact.

Learned Counsel for the complainant has invited our attention to Exhibits P-2 and P-3. Exhibit P-2 is a letter written by Assistant Director in the name, Incharge, Fire Services Station, Habba Kadal of Srinagar and asked the Fire Station, Habba Kadal to submit the report after investigation. Fire Services vide Exb-3 has submitted its report and has confirmed the loss of complainant on 23.12.1994. This letter is dated 4.5.1995. This all has happened after a long time of the occurrence. These reports have been clouded and not relied upon by their own head of the department, i.e., Director, Fire Services which is quoted above. He has issued communication on 18.11.1997 in which he has clubbed this claim as false and fabricated.

3. ALL these report seems FISHY when we see the case diary. Before commenting on case diary, it is admitted fact that about the occurrence of 12.5.1994 FIR 34 of 1994 was registered. Regarding the occurrence of December, 1994 FIR No. 81 of 1994 was registered. Our attention has been drawn to a case diary of FIR No. 34 relating to May, 1994. A copy of which was

filed by the complainant to the Fire Services with dates mentioned in the copy which is placed on record. This copy differs from the original FIR in the case diary so far as the dates are concerned. In the original FIR which is in the case diary, reference of communication of Insurance Company to the police station is shown dated 18.6.1994 and the occurrence 12.5.1994 but the copy of this FIR which has been produced by the complainant to the Fire Brigade and the Insurance Company shows that the dates have been interpolated instead of 18.6.1994 date of communication 28.12.1994 has been shown in the copy and instead of date of occurrence 12.5.1994, 23.12.1994 has been shown in the copy of the FIR. It is amply clear from this copy of FIR which is on the file that the dates have been changed just to cover the December occurrence. When it is crystal clear from the original case diary that the occurrence has taken place on 12.5.1994. This interpolated FIR which is on the file is marked ''A''. This causes serious doubt in the case. It is this FIR which was not believed by the Fire Brigade authorities also then a fresh copy was arranged by the complainant which was given to them which was not interpolated. Under these circumstances we doubt the genuineness of the claim so it is dismissed. Complaint dismissed.