(2002) 08 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Ghulam Mohi-Ud-Din Shah APPELLANT

Vs

Oriental Insurance Company Ltd. RESPONDENT

Date of Decision : 14-08-2002

Acts Referred:

Citation : 2005 1 CPJ 406

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

Final Decision : Complaint allowed with costs

Judgement

1. SHORTLY put and shorn of details it reveals from the complaint that the complainant hired the services of O.P. for insuring his residential building along with household goods under Policy No. 11/96/0433 after the payment of insurance premium of Rs. 700.00. The total sum insured was Rs. 10.00 lacs. Said insurance cover was valid from 21.8.1995 to 20.8.1996. The said property gutted in fire on 10/11th September, 1995. Claim was raised. Shri M.K. Wali was sent as preliminary Surveyor who made the spot inspection and confirmed the loss. FIR also was filed. S.P. Kupwara confirmed the loss. Assistant Director, Fire Services, Sopore also confirmed the loss of the property. His report is also on the claim file.

2. O.Ps. was noticed. They filed their written version wherein they admitted that they received premium from some Ghulam Mohi-ud-Din. They tried to trace out the underwriting documents but these get misplaced clandestinely. The O.P. took a stand that in this case there is no insurance contract with the complainant. They never received any premium. The policy produced by the complainant is not signed by Shri B.N. Kaul, Development Officer, of the Company. His signatures have been forged. It is admitted that they after receiving the claim appointed G.M. Bhat to reassess the loss who has reassessed it at Rs. 5,00,681.00. In short the O.Ps. resisted the complaint on the ground that there was no insurance contract between the complainant and the O.Ps. on the date of the loss. Parties have led the evidence. Complainant has produced his own affidavit and has subjected himself to the cross-examination. On the other hand O.P. has produced B.N. Kaul, Development Officer.

Commission of its own on the consensus of the parties has summoned Khursheed Ahmed, Insurance Agent. He also has been examined by the Commission. Complainant has supported his complaint and has deposed that M.K. Wali, Surveyor assessed the loss to the tune of Rs. 6,25,000.00 as conveyed to him. He has stated that he directly get the insurance done from the O.P.''s office and paid the premium in cash. Mr. B.N. Kaul, Development Officer, has in his statement denied to have signed the insurance policy produced by the complainant. He has admitted that he has changed his signature but has categorically taken the stand that he has not signed the insurance policy and has claimed that the policy produced is fraudulent and his signatures have falsely been got recorded on the policy. He has admitted that the premium receipt in the file is original.

3. HEARD learned Counsel for the parties. Learned Counsel for the complainant has vehemently argued that the insurance policy produced by him is signed by the Development Officer and is original one. He has laid stress on the premium receipt which according to him is also original. There is no dispute about the date of occurrence and the damage to the property of the complainant. The only dispute in this complaint is as to whether complainant has insured his property or not and whether B.N. Kaul, Development Officer had affected his signature on the policy or not. It is a fact that B.N. Kaul, Development Officer, of the company has denied to have signed the insurance policy but at the same time he has admitted that he has changed his signature. He has also admitted that before changing his signature, he used to sign in a similar way as is reflecting from the signature on insurance policy which is on the record. However, he has denied to have signed this policy.

4. INSURANCE Company has not denied the premium receipt. They have admitted and established in written version that they have received the premium of Rs. 700.00 but from some Ghulam Mohi-ud-Din and not from the complainant whose name is Ghulam Mohi-ud-Din Shah. The whole dispute is regarding the word ''Shah''. Premium has been received from Ghulam Mehi-ud-Din. Opposite party appointed the Surveyor M.K. Wali for assessment of loss who immediately after the loss, went on spot and confirmed the loss and assessed the loss at Rs. 7,08,269.00. He believed both the insurance policy and the premium receipt. Then another investigator and re-assessor was appointed namely Mr. G.M. Bhat who also confirmed the loss and re-assessed the amount for Rs. 5,00,681.00. He also did not object to the insurance policy and the premium receipt. During the pendency of the complaint, O.P. deputed Mr. G.R. Bhat, Scientific Investigator. Mr. G.R. Bhat has investigated the case in detail. He has found the insurance policy No., Premium Receipt No., Code No. of Khursheed Ahmed Agent as original and he went from table to table in the office of the Insurance Company and confirmed that the insurance policy is original. It was prepared by Nazir Ahmed Bhat clerk of O.P. Mr. Nazir Ahmed Bhat has admitted his initials on the policy and has admitted that the insurance policy was signed by Shri B.N. Kaul after the same was prepared by the said Nazir Ahmed Bhat. This Nazir Ahmed Bhat also

admits that signatures of Shri B.N. Kaul on the policy are genuine. The investigator has further confirmed that the premium receipt also is original. He went to Miss Sabia Dar concerned Accounts Clerk who admitted that the premium receipt is in original and has been issued after receipt of premium on the basis of entories on the proposal form and on premium receipt scroll. She has also confirmed her signature on the premium receipt. This investigator has drawn conclusion of his own which is not supported by his investigation (sic.). He says that the insurance has been sought after the fire incident. This is nobody''s case. Even the Development Officer B.N. Kaul has admitted that the premium receipt is in original. We have examined the premium receipt. It is dated 21.8.1996. Here the mistake has crept in because the original claim file shows that it has been issued on 21.8.1995 and not 1996. This is also reflected from the original premium receipt register. The same No. is there, Code No. is there but instead of 1996, it is dated 1995.

5. LEARNED Counsel for the O.P. has relied on the Forensic Laboratory report. The signature of B.N. Kaul, Development Officer was sent to Forensic Laboratory, Jammu. They have not out rightly rejected that these are not the signatures of B.N. Kaul but have said that there are certain variations in the signatures of B.N. Kaul and the specimen signatures. In the light of whole evidence discussed, we don''t give much credence to this report because the concerned clerks also have admitted that B.N. Kaul has signed the insurance policy. However, even for the sake of arguments we agree that this policy is not signed by B.N. Kaul. There is not an iota of suspicion that the premium receipt is not in original. Even in the written version premium receipt is not denied but only thing is that it is in the name of some Mohi-ud-Din and not in the name of Ghulam Mohi-ud-Din Shah.

6. WE have examined Scrutiny record of the company which shows that insured is Ghulam Mohi-ud-Din Shah. Assessment is Rs. 7,08,269.00 and re-assessment is Rs. 5,00,681.00. It has been confirmed in this scrutiny note that Rs. 700/- has been received as premium from Ghulam Mohi-ud-Din. WE have examined carbon copy of premium receipt register pertaining to the year 1995 which was produced before us although we had asked the company to produce original one but that was not produced. In the carbon copy we have found that insertion has been made against the name of Mohi-ud-Din word ''Wani'' has been inserted which obviously appears that this is an after-thought and has been inserted later on. Even if we believe Mohi-ud-Din Wani it has never been pleaded in the written version that insured is not Mohi-ud-Din Shah but it is Mohi-ud-Din Wani. Nor any witness has deposed any thing that insured was Mohi-ud-Din Wani. It appears that the Insurance Company has mala fide intentions not to pay the insurance claim to the complainant. It is why they have inserted the name of ''Wani'' had there been insurance in the name of some other Mohi-ud-Din or Mohi-ud-Din Wani these could have been produced before the Commission though the Commission ordered to do so. We have examined the statement of Khursheed Ahmed Agent also. Khursheed Ahmed has stated that the premium receipt is in original, it cannot be obtained by any person at some other place. He has

admitted its Code No. as correct and has admitted that the insurance policy is in original.

Expert evidence cannot be treated as conclusive in isolation of other material on the record. Here in this case we see the circumstances are such that every concerned man has admitted that the insurance policy is original which has been signed by B.N. Kaul and premium receipt is original. However, there are two opinions about the premium receipt. Premium receipt is admitted by the O.P. as original one. Complainant has relied on various authorities in this behalf. Some of these authorities are cited as under: (1) Bhagwan Kaur v. Shri Maharaj Krishan Sharma and Others, AIR 1973 S.C. 1346. (2) Shri Chand v. Smt. Ramrati Devi and Another, AIR 1980 Allahabad 294 (3) State of Maharashtra v. Sukhdev Singh, AIR 1992 S.C. 2100 (4) S. Gopal Reddy v. State of Andhra Pradesh, AIR 1996 S.C. 2184

7. ARGUMENTS were heard on 8.7.2002 and carbon receipt register was produced on that day. Learned Counsel for O.P. contended that company has got some clues of fraud played in this case. He sought time to produce material. We gave him 4 weeks'' time to produce the fresh material otherwise case posted for announcement of judgment. On 8.8.2002 no fresh material regarding the commission of any fraud or fake claim was produced so we dictated the judgment today. Taking totality of circumstances into consideration we allow the claim and direct the O.P. to indemnify the complainant in accordance with the assessment made by the first Surveyor which is amounting to Rs. 7,08,269.00. It is so because it is an established law that the assessment favourable to the complainant be relied upon. See judgment passed by the Hon''ble High Court in the case of Oriental Insurance Co. Ltd. v. Sham Lal Bhat, III (1999) CPJ 239 (D.B.). This amount will be paid with 9% interest from the 3 months after the first survey report i.e.,12.2.1997. Rs. 3,000.00 are also allowed as litigation charges. The whole amount be paid to the complainant within a period of 6 weeks. Complaint allowed with costs.