(2012) 03 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

G.K.Kannan APPELLANT

Vs

Branch Manager M/s United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Citation : 2012 0 NCDRC 84

Hon'ble Judges : Suresh Chandra J.

Final Decision : Revision petition dismissed

Judgement

1. CHALLENGE in this revision petition is to the order dated 29.10.2010 passed by the State Consumer Disputes Redressal Commission, Chennai (?State Commission? for short). Vide its impugned order, the State Commission dismissed the appeal of the petitioner which the petitioner had filed for enhancement in the reliefs granted by the District Forum vide its order dated 26.4.2006 with which the petitioner was not satisfied. The District Forum vide its aforesaid order had partly accepted the complaint of the petitioner in terms of the following order:- "(12) At final the petition was partly allowed. The respondent was directed to pay the damages as mentioned below to the petitioner. 1) for 15 chicken shed Rs.3,06,000/- 2) for stone posts Rs.39,000.00 For erecting Rs.2,500.00 ??????? Rs.41,500/- 3) for net which was used in the shed Rs.50,000/- 4) for water pipe Rs.45,000/- 5) for electric wiring and accessories Rs.45,000/- 6) for flooring Rs.45,000/- 7) for chicken pannai accessories Rs.45,000/- 8) for mental agony Rs.10,000/- Totally Rs.5,87,500/-. As detail stated above, this forum directed to the respondent to pay Rs.5,87,500/- for damages and Rs.1,000/- towards legal expense to the petitioner before 31.5.2006. Further this forum directed to the respondent to pay 9% interest for the above said Rs.5,87,500/- from the date of petition, i.e., 8.12.2004 till the payment to the petitioner."

2. BRIEFLY stated, the facts leading to the present revision petition are that the petitioner (complainant) who was running a poultry farm which had 15 sheds, insured the same with the respondent insurance co. (opposite party) for a total

insured amount of Rs.19,12,500/- for the period 15.12.2003 to 14.12.2004. On 31.7.2004, there was a fire accident in the poultry farm in which not only the sheds but also chicks, chicken feed and other apparatus got completely damaged for which a police complaint was filed resulting in the registration of the incident as a case of fire accident. The petitioner lodged a claim for Rs.26,53,530/- which was repudiated by the respondent insurance co. as being excessive. According to the petitioner, the respondent co. offered to pay only a sum of Rs.4,16,425/- which the petitioner did not consider as being proportionate to the loss sustained by him and hence a consumer complaint was lodged with the Dindigul District Consumer Redressal Forum (?District Forum? for short). In his complaint, the petitioner lodged a claim for Rs.17,78,000/- on account of loss suffered by him and Rs.1,00,000/- for mental agony and harassment. The respondent/opposite party resisted the complaint mainly on the ground that the complainant had taken an insurance policy only for 15 thatched sheds occupied as a poultry farm but excluding the birds and hence the complainant was entitled for the loss on account of the fire accident in respect of the poultry farm excluding the birds and the same according to the respondent co. was of the order of Rs.4,10,425/-. Accordingly, the company had made an offer to the petitioner but the same was refused. It was, therefore, submitted by the respondent co. that the complainant is claiming compensation for the items not covered under the policy. It was also contended that the claim was processed in accordance with the terms and conditions of the policy and simply because the total claim was not being accepted by the respondent co., it cannot be treated or termed as deficiency in service. Based on the documents placed on record by the parties before it and other evidence adduced, the District Forum partly accepted the complaint in terms of the aforesaid order. As stated above, not feeling satisfied with the order of the District Forum, the petitioner/complainant approached the State Commission for enhancement in the relief which was dismissed by the State Commission vide its impugned order.

We have perused the orders of the Fora below and other documents placed by the petitioner on record and have heard Ms. A. Subhashini, Advocate, learned counsel for the petitioner. It is to be noted that a surveyor was appointed to assess the loss and his report, a copy of which is placed on file, has been duly considered by the Fora below. It is also to be noted that the damage to the sheds and the loss on account of that during the fire accident was inspected by an engineer deputed by the respondent co. Both these reports have been considered at length by the District Forum as well as by the State Commission. The main contention of learned counsel for the petitioner is that total insured value under the policy is Rs.19,12,500/- and hence the claim of Rs.17,78,000/- made by the petitioner on account of loss suffered by him in the fire accident is well within the insured amount and the same should have been accepted by the respondent co. In support of her contention, she has relied on the judgements of the Apex Court in the cases of Dharmendra Goel Vs. Oriental Insurance Co. Ltd. [(2008) 8 SCC 279] and Oriental Insurance Co. Ltd. Vs. Ozma Shipping Co.

[(2009) 6 SCC 298] besides a judgement of the National Commission in the case of New India Assurance Co. Ltd. Vs. Bhagat Singh [(2009) (2) CPR 85 (NC)]. She has pleaded that when the respondent insurance co. accepted the value of a particular insured goods at the time of insuring the goods, it cannot be allowed to disown that very figure of insured sum on one pretext or the other when it is called upon to pay the compensation on the covered incident taking place and the claim being made by the insured party. It is, however, not disputed by learned counsel that the policy does not cover the birds in the poultry farms.

3. WE have considered the submissions made by learned counsel carefully. Both the Fora below have returned their concurrent finding in favour of the petitioner but they have accepted the claim of the petitioner in respect of the loss partly based on the documents placed on record by the parties. The State Commission while dismissing the appeal of the petitioner for enhancement in the compensation amount and upholding the order of the District Forum has made the following observations in support of its impugned order:- "7. Admittedly the 15 buildings insured, for which sum assured, are all thatched shed, aged about two years or so. It is the common knowledge, the life of the thatched shed will not be a long period, it depends upon the atmospheric conditions, viz. moisture, rain, affected by termite etc. Therefore, while calculating the value for the old thatched building, the value as on that date viz. the date of construction should not be taken, depreciation should be given, and that amount alone should be taken, as the actual loss, and not as claimed by the complainant, in this case, as on the date of filing of the petition, for new thatched shed, for which alone, engineers report obtained, that too, in our considered opinion, as rightly recorded by the District Forum, escalating the price. Therefore, the non-acceptance of the value given by the complainant, or rejection of the documents relied on by the complainant, to prove the value of the sheds, cannot be faulted. In the absence of any acceptable evidence, we have to search, for materials, where comes the surveyor report. 8. The insurance company is entitled, statutorily also, to nominate or appoint a surveyor, to assess the damage, in order to reimburse the claim of the policy holder. In this way, a surveyor was appointed, and he had inspected the premises on 31.7.2004, and on 2.8.2004, receiving the instruction from the opposite party on 31.7.2004, around 7.00 a.m., i.e., without causing delay. As seen from the report, he had elaborately described the nature of poultry, where and how it was commenced etc., and it appears this is, the 2nd largest farm in Theni district. Originally the poultry farm was started with 7 sheds, and increased to 15 by constructing another 8 sheds. As seen from page 3 of Ex.B1, he had given working details, for construction of thatched shed, roof etc., including material and labour. Taking into account, the cost of pillar, errection charges, knitted MS wire, chicken mesh, to lay water pipe etc., in which calculation, we are unable to find any factual error, since nothing is pointed out, as if the surveyor has committed any deficiency. The District Forum, considering this report, and its reasonableness, accepted the value given for 15 sheds, less the depreciation, valued the stone pillar also, including labour

charges, further fixing the amount for laying pipes, including rewiring etc. Thus in detail, reached a conclusion, that the complainant is entitled to only a sum of Rs.5,87,500/- which appears to be quite reasonable in the absence of another, as per the terms and conditions of the policy, which we have already extracted, at the first instance itself. As seen from the complaint, for 15 sheds a sum of Rs.10,20,000/- is claimed, and for stone pillar Rs.78,000/- claimed, for knitted MS wire, chicken mesh a sum of Rs.2,40,000/- claimed, and a further sum of Rs.150000/- is claimed under the heading water pipeline laying cost, and all these headings were taken into account, and in the absence of acceptable materials, amount is quantified. For flooring, feeding amounts claimed are negative, in which we are unable to find any fault, since that is not covered specifically, under the policy, whereas it covers only sheds, if at all that should include electrical wiring, pipeline etc., and nothing more. In the reasonable order passed by the District Forum, we are unable to find any error, either on facts or on law, though the complainant had not satisfied about the amount granted. 9. An attempt was made on behalf of the appellant to urge that the complainant suffered mental agony etc., for which the opposite party cannot be held responsible in this case. The fire had taken place due to short circuit as pleaded. As and when reported, without any delay surveyor was appointed, value assessed, amount offered, thereby the opposite party, satisfying the service availed or hired, as the case may. If the complainant is unable to satisfy himself, for that, under the heading, mental agony or deficiency in service, no amount could be offered, since it is not the case of total repudiation of the claim, whereas the dispute was regarding the quantum of amount, payable under the policy. This was also taken into account, and appropriate order was passed, which we are inclined to confirm as such. Hence the appeal is devoid of merits, and liable to be dismissed."

We agree with the view taken by the State Commission while dismissing the appeal of the petitioner and upholding the order of the District Forum. The ratio of the cases relied upon by learned counsel for the petitioner does not get attracted to the present case where the issue is one of proper assessment of loss on account of fire and not of the valuation of the insured goods being disowned. Merely because the insured value is of a higher amount does not mean that the party insured will be entitled to get the entire insured amount in the claim without proper and justified assessment of the extent of loss to the insured property. In the circumstances, we do not find any reason or ground to interfere with the well-reasoned orders of the Fora below. The revision petition devoid of any merit, therefore, stands dismissed at the threshold but with no order as to costs.

