

(2002) 06 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

GOWHAR SHERAZ BRICK KILN

APPELLANT

Vs

National Insurance Co. Ltd.

RESPONDENT

Date of Decision : 03-06-2002

Acts Referred:

Citation : 2005 1 CPJ 440

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

Final Decision : Complaint allowed

Judgement

1. SHORN of details the case of complainant is that he insured his stocks and the Unit which comprises of an "Oven/Furnace" and an adjacent building, located within the business premises for a sum of Rs. 11.00 lacs with O.P. under Policy No. 421001/3103970/94-95 covering risks against fire, flood and the terrorist activity. The policy was valid between 11.8.1994 to 10.8.1995 and premium of Rs. 12,540/- was duly paid for it. In the last week of July, 1995 due to heavy and continuous rains, stocks and the whole unit was damaged by the floods. Most of the stocks were in the semi-finished (unbaked) bricks form ready to be put in or under the oven/furnace got devastated. Complainant raised the claim and informed the O.P. O.P. deputed Tawfeeq Ahmed Chisti, Surveyor for inspection and survey who estimated the loss at Rs. 5.00 lacs. Thereafter he was deputed with M/s. V.N. Sarin and Co. to assess the quantum of loss. Said Surveyors conducted joint survey and assessed the loss at Rs. 7,10,313.00. O.P. did not settle the claim on the ground that the assessment of the loss was on higher side so they entrusted the whole matter to Aijaz Kirmani and M/s. Hari Om Engineers for investigation and reassessment. They have not filed the report for years together and the O.Ps. of their own without waiting for the report sent the case to another investigator Sharma and Co. for investigation in February, 1998. Sharma Surveyor investigated the matter and reported that there were no floods in 1995 nor any damage was caused to the brick kiln, therefore, the claim may be treated as No Claim. Hence the complaint was lodged by the complainant.

2. O.Ps. were noticed. They submitted their written version. Admitted the

insurance cover, acceptance of the premium and appointment of Surveyors and Investigators. In the written version O.P. has relied on the Sharma reports. Evidence was recorded. Complainants Ghulam Rasool Bhat, Mohammad Yaqoob Rather, Abdul Ahmad Bhat, Ghulam Quadir Mir, Mohammad Ishaq Bhat, Taufiq Ahmed Chisti first Surveyor, Ghulam Mohammad Charoo AEE Flood Control Department Srinagar and Mohammad Sultan Wani, clerk, Flood Control Division, Srinagar were examined. O.P. has examined Mr. Kuldeep Sharma, Investigator and Showkat Hussain, Branch Incharge, National Insurance.

Heard learned Counsel for the parties. learned Counsel for the O.P. Mr. Dendroo has relied mainly on the statement and the report of Sharma, Investigator. According to whom there were no floods in the area during 1995 and there was no loss caused to the property. Learned Counsel for O.P. Mr. Dendru has secondly contended that the brick kiln itself was not in existence when it is claimed to have been damaged by the floods.

3. WE have perused the whole record and we are of the view that the O.P. has not succeeded in disproving the case of the complainant on the following grounds. Mr. Tawfeeq/Ahmed Chisti is the Surveyor who was appointed as preliminary Surveyor on 4.8.1995 to make the spot inspection immediately after the alleged occurrence. He has submitted the report on 22.12.1995 in which he has categorically stated that the floods had ruined the area and has caused the damage and has estimated the damage loss upto Rs. 5.00 lacs. Thereafter he was again appointed as final Surveyor jointly with M/s. V.N. Sarin and Co. and they went on spot on 20.11.1995 within 3-4 months after the occurrence. Both the joint Surveyors went on spot and certified that the occurrence had taken place and devastating damage was caused to the property insured. They assessed the loss at Rs. 7,10,313.00. Unfortunately, the O.P. without any rhyme or reason disbelieved both these reports. It may be mentioned here that it has become the habit of the Insurance Company that when the assessment is made by the Surveyor that is not believed by them. They appoint Surveyors after Surveyors and Investigators after Investigators till their object is achieved i.e., either the assessment is slashed down or it is declared as No Claim. Same thing has happened here also. Joint Surveyors were not believed. Matter was entrusted initially to Aijaz Kirmani and M/s. Hari Om Engineers. Claim was not settled for more than 2 years because the report was awaited from the Investigators. Without asking the Investigators to submit the report, O.P. clandestinely entrusted the matter of investigation to Sharma Surveyors on 17.2.1998 it means after more than 2 years. This was done at the back of the complainant. Sharma Surveyors went on spot on 23.2.1998 to 27.2.1998.

4. NOW we go to the report of Sharma Surveyors. In their report they have categorically stated that some Ghulam Mohammad Mir s/o Ghulam Quadir Mir had sent a complaint that no floods occurred in 1995 and no damage was caused to the complainant's Brick Kiln. Surveyors tried to contact the complainant personally and sent letters to him but it was found that this was a fictitious name

given by some person basically there was no complainant of such name existing. Sharma Surveyors then went to the Flood Control Department and they succeeded in getting a certificate from them which is exhibited as A-2. It may not be out of place to mention that the first Surveyor had sought the certificate from AEE Flood Control Department dated 23.4.1997 according to which flood had devastated the property in question. Sharma Surveyors also went to the AEE and sought another certificate which is dated 23.7.1998 in which it is stated that no damage was caused to the property due to floods. AEE was called here as witness who desposed that both the certificates were signed by Mohammad Sultan who was not competent to sign these certificates. Mohammad Sultan also was examined by the complainant who has admitted that he was not competent to sign the certificate and has admitted that he has done it illegally. Mohammad Sultan clerk has admitted that he has signed the second certificate and has said that the first certificate was issued illegally. Learned Counsel for the O.P. Mr. Dendru has suggested to believe the second certificate which we declined to do on the ground that both the certificates have been signed by Mohammad Sultan clerk who admittedly was not competent to sign these certificates. Executive Engineer examined here has contended that he made local inquiry which conveyed that though floods had occurred in 1995 but there was no damage caused to the brick kiln but has admitted that he was not posted as AEE in 1995 in that Illaqa. He has enquired from the locals in 1997, 2 years after the occurrence. He admitted that Sharma Surveyor approached him for issuing to him second certificate which is exhibited as A-2. However to be on the safer side we can't give much credence to the statement of the witness on the ground that he has inspected the spot after 2 years and was not posted in the area in the year when flood had occurred. Secondly he has admitted that he has not signed the second certificate dated 23.7.1998 which was admittedly signed by Mohammad Sultan who had signed the first certificate also. Sharma Surveyors has also relied on a statement of one local Ishaq Bhat who according to him in 1997 gave in writing that there was no floods. Mr. Ishaq Bhat has also been examined here. He says that some persons came to him, got his sign on a paper. Asked him if there were any floods in the area which he replied in affirmative but his signatures were sought on a paper which was not written by him. This witness has also not supported the report of Sharma Surveyors. According to his statement also all the brick kilners suffered heavy loss due to floods. Case of the complainant is supported by enteries made by the Government Girls Middle School Summerbug near which the brick kiln is situated. This school certificate also is obvious to reveal that school was closed due to floods on 29th and 30th of July, 1995. This certificate has been obtained by their Surveyor Mr. Aijaz Kirmani whose report was not sought. We have considered the rival arguments from both the parties and it is very difficult for us to disbelieve Joint Survey report who have gone on spot immediately after the occurrence. Especially when that report is supported by the school certificate obtained by the Surveyor of the O.P. School authorities also confirm that they closed the school due to floods.

5. LASTLY, Mr. Dendru Counsel for the O.P. has contended that the brick kiln was not existing at the time of the floods. He has invited our attention to some licence issued by the Tehsildar which conveyed that the licence was registered on 9.8.1995 after the occurrence. This stand has no place in the written statement of the O.P. O.P. has raised this point only at the time of arguments. There is no evidence on this point. Licence has been found from the record of the O.P. Even affidavit also has not been placed on the record regarding this point. This not being part of the pleadings so it is not to be relied upon. For these reasons, therefore, we allow the claim and direct the O.P. to pay Rs. 7,10,313.00 as assessed by the Joint Surveyors along with 9% interest from the date 2 months after the survey report. This amount be paid within six weeks from the date of this order failing which 10% interest will be charged. Complaint allowed.