(1999) 02 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

GOWREESHANKAR INDUSTRIES APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 23-02-1999

Acts Referred:

Citation : 1999 2 CPJ 489 : 2000 1 CPR 54

Hon'ble Judges : S.Parvatha Rao , T.Ranga Rao , Mamata Lakshmanna J.

Final Decision : Complaint allowed

Judgement

1. THE only claim in this O.P. filed by the complainant, M/s. Gowreeshankar Industries, is that it should be paid interest on the amounts paid by the opposite party-Insurance Company at 18% per annum on Rs. 1,04,67,500/- from to 11.3.1996 and on the interest of Rs. 12,54,379.20 Ps. accrued upto 11.3.1996 interest at 18% from 12.3.1996 to 31.7,1996 and also subsequent interest. THE material facts of the case are not in dispute. THE complainant insured its stocks of cotton for a sum of Rs. 3,60,00,000/- under 12 insurance policies. THE stocks were reduced to ashes in a fire accident that occurred on 13.4.1995. THE complainant raised a claim with the opposite party and the opposite party appointed M/s. Mehta and Padamsey Private Limited, Bombay and M/s. Moinuddin and Company, Hyderabad as Surveyors and they assessed the loss at Rs. 1,04,87,500/-. On 17.4.1995 itself the complainant informed the Surveyors that it was agreable to receive the amount i.e., Rs. 1,04,87,500/- in full settlement of its claim. THEreafter, even though the opposite party settled its claim at Rs. 1,04,67,500/-, it paid that amount only on i.e., about 11 months after the accident. THE opposite party responded to legal notices dated 25.3.1996 and 27.5.1996 got issued by the complainant for interest by reply dated 3.6.1996 contending that there was no undertaking by it to pay interest under the policy. THE complainant then approached this Commission by way of the present complaint on 7.8.1996.

2. THE opposite party filed a laconic and perfunctory version/counter on 2.4.1998. THE reason given by the opposite party for the delayed payment of the

amount of Rs. 1,04,67,500/- is that as the claim was for more than a crore they appointed an Investigator to investigate into the claim and he filed his report on 20.10.1995 and after verifying the Surveyor''s report and Investigator''s report at various levels they settled the claim on 11.3.1996. But the date when the Surveyors gave their report was not mentioned by the opposite party in its version/counter. It had also not stated when it appointed the Investigator and why the Investigator took time till 20.10.1995. THE reports of the Surveyors and the Investigator are not produced before us. No other material whatsoever have been placed before us to explain the delay in settling the matter and what complications or difficulties were there in settling the claim. When very large amounts are involved it is incumbent on the insurer to settle the claim at the earliest and the burden is on the insurer to explain satisfactorily the delay in settling the claim by placing convincing and acceptable material before the Tribunals under the Act. The complainant filed alongwith the complaint xerox copies of letter dated 17.4.1995 addressed by the complainant to the Surveyors and xerox copies of letters dated 13.1.1996, 25.3.1996 and 27.5.1996 : the first addressed by the complainant, and the latter two by its Lawyer to the opposite party. In the letter dated 17.4.1995 addressed to the Surveyors, the complainant stated, inter alia, as follows : "With reference to the survey carried out by you and the discussion we had with you, we hereby confirmed the following : (1) We have furnished all relevant details, documents, statements etc. for your verification. The said details, statements, documents etc., are true and correct. (2) We are agreeable to accept a sum of Rs. 1,04,87,500/- (Rs. one crore four lac eighty seven thousand five hundred only) in full and final settlement of all our claims under all policies issued by The New India Assurance Company Limited, Adilabad. xxx xxx xxx."

In the letter dated 13.1.1996 addressed by the complainant to the Adilabad Branch Manager of the opposite party the complainant stated that in the fire which occurred on 13.4.1995 in the premises of its Ginning Factory and Rice Mill cotton heaps caught fire and goods worth Rs. 1,91,07,794/- were burnt out. It was further stated as follows : "After appointing of Surveyors by the Company, named, Mehta & Padamsey Private Limited, Bombay and Moinuddin Mohammad & Company, Hyderabad, the both the Surveyors after going through all the examinations assessed the burnt goods of Rs. 1,04,87,500/- and the same was accepted by us. Later on as and when the relevant papers were asked by the Company, the same was submitted at that time only. After completing all the formalities, we were expecting the claim amount at the earliest. As it was assured by the Company Officers, all the formalities were completed by the month of July..."

In the Lawyer''s notices dated 25.3.1996 and 27.5.1996 it was reiterated as follows : "The above said Surveyors after making a thorough Survey and also upon the inspection of documents and on recording the statements had assessed the loss at Rs. 1,04,87,500.00/-. My client (the complainant) also accepted this assessment and he gave a letter on 17.4.1995 to the above said Surveyors. Thus the matter of assessment of loss to the property under insured with your Company was settled by 17.4.1995 under all categories."

Though in the Lawyer''s notices it was stated on behalf of the complainant that the Surveyors assessed the loss at Rs. 1,04,87,500/-by 17.4.1995 itself, in the letter dated 13.1.1996 addressed by the complainant it was stated that all the formalities for settling the claim were completed by the month of July. This was not denied by the Adilabad Branch Manager of the opposite party in his letter dated 3.6.1996 addressed to the complainant''s Counsel in reply to his notice dated 25.3.1996, except stating that there was no delay or negligence on the side of the opposite party and that since the claim was very high, the approval and sanction at different levels had to be obtained, and denying the allegations of carelessness and laziness.

We find that no good explanation is there for the delayed payment of Rs. 1,04,67,500/-. As has been held by the Hon''ble Supreme Court in United India Insurance Company Limited v. M.K.J. Corporation, III (1996) CPJ 8 (SC)=(1996) 6 SCC 428, reasonable time within which a claim should be settled by the Insurance Company would be 2 months from the date of submission of the Surveyor''s repeat. The Supreme Court in that case also observed that reasonable interest that could be directed to be paid on the delayed payments would be at 12%. The National Commission considered all aspects of the matter following the decision of the Supreme Court in M.K.J. Corporation (supra) in its recent decision in United India Insurance Company Limited v. Jahangir Spinners Private Limited, I (1999) CPJ 5 (NC), and reduced the 18% interest granted by the State Commission in that case to 12% per annum and also held that that interest would start accruing two months after the submission of the report by the Surveyor. We also had occasion to consider this aspect in S.Parthasarathi v. Divisional Manager, United Insurance Company Limited, 1998 ALD (Consumer) 284, wherein, after referring to the judgment of the Supreme Court in M.K.J. Corporation (supra), we held that after the report of the Surveyor the insurer ought to immediately settle the matter without any further delay. Any delay in settling the claim would amount to deficiency in service on the part of the insurer. In that case there was delay by the insurer in seeking the Surveyor''s report as well, and in view of that circumstance we held that the insurer would have to pay interest at 12% per annum after one month from the date of the Surveyor''s report.

3. IN the present case we find that the sum of Rs. 1,04,67,500/- was paid on 11.3.1996 i.e., nearly five months after the receipt of the INvestigator''s report and nearly 11 months after the complainant expressed its willingness to receive about that amount towards full settlement of its claims. Hence we have to hold that there was deficiency in service on the part of the INsurance Company in not settling the claim at the earliest after receiving the report of the Surveyors and that no acceptable basis is made out for the delay in payment of the sum of Rs. 1,04,67,500/- till 11.3.1996. IN view of the opposite party withholding from us

information as to when the Surveyors submitted their report and when it appointed the INvestigators and why they took inordinate time till 20.10.1995 to submit their report, interest will have to be paid by the opposite party on Rs. 1,04,67,500/- at 12% per annum from 10.8.1995 i.e., after leaving a reasonable time of about 4 months after the complainant expressed on 17.4.1995 its willingness to receive Rs. 1,04,87,500/- in full settlement of its claims, upto 11.3.1996 i.e., for a period of 7 months; in doing so we have kept in view the fact that the complainant accepted the amount of Rs. 1,04,67,500/- estimated by the Surveyors themselves, which was not denied by the opposite party even though the fact of acceptance was mentioned in the Lawyer''s notices dated 25.3.1996 and 29.5.1996 claiming interest at 24% per annum from 17.4.1995 to 11.3.1996. In the result we allow this complaint only to the extent of directing the opposite party to pay interest on Rs. 1,04,67,500/- at 12% per annum from 10.8.1995 to 11.3.1996. The said interest shall be paid within 8 weeks from today i.e., by 20.4.1999, failing which the said amount of interest shall be paid with interest at 12% per annum from today.

4. THE complaint is accordingly allowed with costs of Rs. 2,000/-, which shall also be paid within 8 weeks from today. Complaint allowed.

