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In the National Consumer Disputes Redressal Commission

Gupta Polyster Pvt. Ltd. — APPELLANT

Vs

National Insurance Company Ltd. and Ors. — RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Citation : 2016 1 CPJ 1

Hon'ble Judges : M.SHREESHA J.

Final Decision : Appeal Allowed

Judgement

1. CHALLENGE in this Appeal, by the Complainant, under Section 19 of the Consumer Protection Act, 1986 (in short "the Act"), is to the order dated 12.5.2011, passed by the State Consumer Disputes Redressal Commission, Maharashtra (for short "the State Commission"). By the impugned order, the State Commission dismissed the Complaint on the ground that the claim made by the Complainant is a fraudulent claim, as the fire broke out in Gala No. B -36 and the material kept therein does not belong to the Complainant Company alone, but also belongs to M/s. Santosh Synthetics & Silk Mills Pvt. Ltd. (hereinafter referred to as "Santosh Silks").

2. THE facts material to this Complaint are that the Complainant Company had taken an insurance policy No. 250500/3100440/HKG for an assured sum of 20,00,000/ - for its stocks through Opposite Party No. 2, i.e., State Bank of India, for the period covering 21.2.1990 to 20.2.1991. On 11.12.1990, accidentally a fire broke out in Gala No. B -36 and the Complainant pleaded that goods worth 20,56,571/ - were burnt and completely destroyed. A claim was lodged with the insurance company and all the necessary documents were provided. The Complainant averred that the stock as on 30.11.1990 was 20,56,571/ - but as the sum assured was 20 lakh, the claim was restricted to 20 lakh. As per the certificate issued by the fire -brigade office, major stock of goods in Gala No. B -36, which were destroyed, belonged to the Complainant Company.

3. THE Complainant pleaded that all the information asked for by the surveyor

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was furnished but the insurance company, time and again, demanded the same particulars again and again and delayed the settlement of their claim. Letter dated 23.9.1992 was sent by the Complainant Company giving all the details of the bills with respect to purchase of machinery, etc. A legal notice was issued on 6.8.1993, for which the Respondent Insurance Company replied vide letter dated 21.9.1993.

4. THE Complainant averred that the Respondent had repudiated their claim on 2.2.1994 and thereafter a letter was addressed by the Chairman -cum -Managing Director on 9.2.1994 stating that there was a lot of unsold stock, as they had undertaken job work for Santosh Silks, but the said goods were kept in Gala No. 35 and were with respect to "Grey Cloth" only. The Appellant pleaded that Gala B -36 was in their possession since January 1988 and that both the finished goods and yarn were kept on a wooden loft. After March 1990, the sales went down and the stocks piled up, so they took up processing work from Santosh Silks, who supplied their yarn. The Appellant averred that the balance sheet certified by the Chartered Accountant for the year 1990 -91 would show purchase of yarn and the bills/purchases reflected therein include the excise duty paid to the Government. The stock in Gala No. B -36, which was destroyed by fire, was hypothecated to the second Opposite Party Bank and the same was informed to the Insurance Company vide letter dated 11.8.1992. The letters of the said Bank show that the stock was valued at 20,56,571/ -. Despite giving the relevant information to the surveyor, the Insurance Company repudiated their claim. Hence, the Complainant filed a Complaint before the State Commission seeking direction to the insurance company to settle the claim amount with interest @ 18% together with compensation and costs. The first Respondent/National Insurance Company Ltd. filed its written version, admitting the issuance of Fire and Special Perils Policy No. 250500/3100440/HKG, for a sum insured of 20 lakh, covering the period from 21.2.1990 to 20.2.1991. The insurance company pleaded that the fire, which occurred on 11.12.1990, in the Complainant''s premises was restricted to Gala No. B -36 and that at that point of time, the Appellant Company was doing job work for Santosh Silks. The stock of Santosh Silks consisting mainly of yarn and lying on the loft, was insured with United India Insurance Co. Ltd., which is the fourth respondent herein.

5. THE Insurance Company averred that as per the physical inventory taken by the surveyors M/s. R.N. Thackar & Co. and M/s. C.P. Mehta & Co. on behalf of Santosh Silks, there is no possibility of the stocks of the Appellant being destroyed in Gala No. B -36. They stated that the Complainant had not submitted the balance sheet for the year 1990 and the Gala -wise stock statements, inspite of repeated reminders. Therefore, based on the survey report of M/s. R.N. Thacker & Co., who had taken physical inventory in the presence of Santosh Silks, of their stocks lying in Gala No. B -35 & 36, the insurance company repudiated the claim as "No Claim". It is averred that they had repeatedly urged the Complainant to supply the relevant documents but the same was not furnished. With regard to the machinery and accessories, the claim of the insured

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was settled.

6. WE observe from the record that this is the second round of litigation. This Commission by its order dated 29.9.2000 in F.A. No. 75 of 1995 remanded the matter to the State Commission to give an opportunity to Santosh Silks and also United India Insurance Co. Ltd. to present their case. The Complainant was directed to file the amended application before the State Commission by adding Santosh Silks and United India Insurance Co. Ltd. as the Respondents. After amendment, the State Consumer Commission dismissed the Complaint observing as follows: "Thus, in our view, the Complainant failed to establish that Complainant Company had kept any stocks of yarns in Gala No. B -36 and whatever material was there by way of stocks, stocks in trade, by way of raw material, by way of yarns or by way of finished products all belonged to Opponent No. 3 - M/s. Santosh Mills and none of these items belonged to Complainant Company. Complainant Company was doing job work at the relevant time on behalf of Opponent No. 3 Company and so far as yarn and other stocks, stocks in trade and stocks in process material is concerned everything belonged to Opponent No. 3, who had taken independent insurance from Opponent No. 4 - United India Insurance Company and Opponent No. 4 in turn had assessed loss through their own Surveyor - M/s. C.P. Thacker & Co. Opponent No. 4 Company was prepared to give the amount of reimbursement to Opponent No. 3, but they found that M/s. Gupta Polyester Pvt. Ltd. Co. and Opponent No. 3 were engaged in making claim over the same property which was admittedly destroyed in fire and therefore, they had not released the amount of cheque to Opponent No. 3. In the circumstances, we are finding that there is overwhelming evidence brought on record by Opponent No. 1 - United India Insurance Co. that Opponent No. 3 - M/s. Santosh Mills and Opponent No. 4 - United India Insurance Co. Ltd., clearly and abundantly established that the stocks destroyed in fire on 11.12.1990 in Gala No. B -36 of Nand Bhavan Industrial Estate, Andheri (E) belonged only to Opponent No. 3 Company and not to Gupta Polyester Pvt. Ltd., Complainant herein and therefore, we have no hesitation in holding that Complainant had not lost any goods belonging to it in the fire that broke out in Gala No. B -36 on 11.12.1990. We, therefore, record our finding on Issue No. (ii) in the negative."

The brief point that falls for consideration is whether the Insurance Company was deficient in repudiating the claim and if the Complainant Company is entitled to the relief sought for in the Complaint?

7. FIRSTLY , we address ourselves to the issue whether the Insurance Company was justified in repudiating the claim of the Complainant vide its letter dated 2.2.1994. The repudiation letter reads as follows: "NATIONAL INSURANCE COMPANY LTD.

Our Ref: Tech/1/B -17

February 2, 1994

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Mr. L.N. Gupta,Gupta Polyester Pvt. Ltd.,B -37, Nand Bhuvan Indl. Estate,Mahakali Caves Road,Andheri (E),Bombay -400 093

Dear Sir,

Fire dated 11.12.90

Claim No. 250500/31/90 -90/120

Thank you for your letter dated 18th January, 1994.

On enquiry I understand that as per the Surveyors there was no stock belonging to you, lying in the affected block at the time of fire. This was corroborated by the Surveyors appointed by United India Insurance Co. Ltd., involved in the subject fire loss.

Our Divisional Office had been advising you to submit necessary documentary evidence in support. In spite of repeated reminders you could not supply the same and hence our concerned Divisional Office closed their file as ''no claim''.

In the circumstances, I await your further advices.

Yours faithfully,

Sd/ -(Y.D. PATIL)CHAIRMAN -CUM -MANAGING DIRECTOR

cc. to The Asstt. General Manager,BBRO, Bombay".

8. WE observe from this letter that the ground for repudiation is based on the survey report of the fourth Respondent viz. United India Insurance Company Limited. At the outset, we observe from the said Survey Report that the premises insured was Block No. B -37 and the surveyor had admittedly surveyed the property insured i.e. Block B -37, for the stock belonging to Santosh Silks. With respect to the extent of damage, the Surveyor had noted that the fire was restricted to Gala No. B -36 and that there was no damage in Gala Nos. B -35 and B -37. The Surveyor reported the LOSS ASSESSMENT, as follows: " 8.00 LOSS ASSESSMENT: - -

8.1 We had first visited the site on 12 December, 90 and subsequently on 15 December''90.

8.2 During our first visit, all the three galas were inspected and discussions were held with the Insured as well as the employees of M/s. Gupta Polyester Pvt. Ltd. During this visit, we were informed that the stocks which had been damaged in Gala No. B/36, all belong to the Insured.

8.2.1. Similarly, we were informed that in Gala No. B/35, all the stocks therein, consisting of yarn, yarn/fabric in process and woven fabric, all belongs to the Insured and were saved.

8.2.2. As regards, the stocks in Gala No. B/37, we had been informed that all the stocks therein belonged to M/s. Gupta Polyester Pvt. Ltd. and had been saved.

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8.3 The saved/damaged stocks in Gala Nos. B/35 and B/36 were physically verified to the extent possible during our first visit and the subsequent visit on 15 December''90.

8.3.1 The stock in Gala No. B/37 belonged to M/s. Gupta Polyester Pvt. Ltd. and hence were not in Gala No. B/37 had clear identification marks as belonging to M/ s. Gupta Polyester Pvt. Ltd. and as they were identified accordingly by them as well as by the insured, the stocks were not physically inventoried."

It is not understood as to why the Surveyor had assessed the loss in B -35 and B -36 when the insured premises is admittedly B -37. The Surveyor''s conclusion that the stock in B -36 belonged to Santosh Silks based on some information given to him, is not substantiated by any documentary evidence. It is pertinent to note that the surveyor had assessed the claim at 3,36,779/ - based on the affidavit given by the insured i.e. Santosh Silks. He has not established as to how he had arrived at 3,36,779/ - but only states that the Insured had submitted an affidavit in support of its claim, which amounts to 3,36,779/ -.

9. BASED on this report, the contention of the first Respondent -Insurance Company that both the Surveyors have concurrently concluded that the stock in B -36 did not belong to the Complainant Company, is totally unsustainable. The Survey Report dated 22.7.1992 of the first Respondent shows that the relevant Insurance Policy number itself was not mentioned and that the stocks were not assessed. We observe from the Policy particulars given in the Survey Report that the insurable interest in Stocks had not been addressed to, at all. The Surveyor had stated in his Report that there was loss and damage in Gala B -36 and that the saved/damaged stocks in Gala B -35, B -36 and B -37 were physically verified to the extent possible and that M/s. Gupta Polyester Pvt. Ltd. had claimed that all the stocks lying in Gala No. B -36 belonged to them.

10. AFTER remand, the State Commission appointed a Court Commissioner, who had physically verified the stock in Gala No. B -37 and observed that the stock in Gala No. B -37 belonged to Santosh Silks. The Commissioner had also collected three small pieces of cloth and had submitted the same to the State Commission. The Commissioner noted that each bundle of cloth was having stripe of (Santosh) at the bottom which made the identification of the cloth much easier. These bundles were originally in Gala No. 35 and were intact at the time of fire which occurred in Gala No. 36 on 11.12.1991. Subsequently, a portion of the stock was shifted to Gala No. 37. To reiterate, the Surveyor of the fourth Respondent had assessed Gala B -35 & 36, which was not insured with them. There is nothing on record to substantiate that the stock in B -36 belonged to Santosh Silks It is equally baffling as to how National Insurance Co. Ltd. who is the first Respondent herein had relied on a Survey Report which had assessed the loss in Gala B -37. Keeping in view all the afore -mentioned reasons, we are of the opinion that the act of the Insurance Company, in relying on the survey report of the fourth Respondent and repudiating the claim of the Appellant Company, cannot be sustained.

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11. WAS the Insurance Company justified in repudiating the claim on the ground that the Complainant Company had not furnished the necessary documents inspite of repeated reminders?

12. THE Surveyors, M/s. R.N. Thacker & Co. noted that they had reminded the Insured time and again to furnish the Gala wise details of the stocks belonging to them but the insured had not furnished the purchase bills and the stock details. In reply to this, the learned counsel for the Appellant drew our attention to the letter addressed by the Appellant Company on 11.8.1992 which reads as follows: "Gupta Polyester Pvt. Ltd.

Ref. No. GPPL:764:92

Date: 11th August, 92.

The Divisional Manager, National Insurance Co. BOMBAY

Dear Sir,

Sub: Fire on 11.12.90 and our insurance claim.

Ref: 1. Your letter No. 250500/Fire/92 dated 7.7.92

2. Our letter No. GPPL:741:92 dated 9.6.92

Please refer to your above letter. With great difficulties we have been able to find out the original bills of machinery. Therefore, as desired by you, we are enclosing herewith photo copies of all the bills as per list given on a separate paper enclosed herewith for your doing the needful.

Regarding stocks, we have already written to you many times that the total value of stocks as on the date of fire was given to you vide our letter No. GPPL:503:91 dated 22.6.91 addressed to M/s. R.N. Thaker & Co., alongwith the statement of stock of suitings division as on 30.11.90 as submitted to the Bank. As a proof of the same we are enclosing herewith photo copies of challans and bills of our yarn purchased as well as challans and bills of suitings sent to process house and receiving from the process house etc. etc. The total value of stocks as on the date of fire was Rs. 20.56 lacs. All our stock was lying in Gala No. B -36 and the stock of M/s. Santosh Silk Mills was lying in Gala No. B -35. Some stock of grey cloth and yarn of Santosh Silk Mills was on beams in Gala No. B -35 as well as B -36. We have already written letter No. GPPL:751:92 dated 13.7.92 to M/s. Santosh Silk Mills, sent by Speed Post, copy of which was sent to your office also through Mrs. H.K. Ganatra. We are sorry to state that we have not received any reply from Santosh Silk Mills till today inspite of our repeated requests on phone to their owners Mr. Subhash & Mr. Santosh as well as in writing.

We have already sent to you our rent agreement M/s. Gupta Polyester Pvt. Ltd. and Shree Lakshmi Textile Inds. & Raghuvir Textile Inds. Through Mrs. Ganatra which must be in your files (again enclosed).

Gala No. B -35 and B -36 which are still lying with us. We are again writing a

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reminder letter to them for replying our letter No. GPPL:751:92 dated 13.7.92, copy enclosed and request you also to write to them to do the same.

Regarding the first para on page two of your surveyor''s letter, we wish to state that we had already submitted our Balance Sheet of our company for the year ended March''90 long back vide our letter No. GPPL:503:91 dated 22.6.91 which should be already in the files of your surveyors. You may also call for the photo copy of this balance sheet from them for your inspection and record.

....

Regarding last para on page 2 of your surveyor letter, we wish to state that your surveyor is asking the same question again and again which we have replied many times and also in our letter dated 11.8.92. We again confirm the same that all our stocks were lying on wooden loft in Gala No. B -36 which was completely burnt. The stock of M/s. Santosh Silk Mills was lying on beams in Gala No. B -35 and some stocks of grey cloth and yarn (under process) of M/s. Santosh Silk Mills was lying on beams in Gala No. B -35 and B -36, which is still lying with us. Therefore, this reply replies the question of Galawise stock details as desired by your surveyor. This was already replied in our letter No. GPPL:764:92 dated 11.8.92 to you.

We would now request you to kindly see that our claim is settled immediately without any further loss of time as our polyester yarn plant is also almost closed for last more than 4 months for shortage of funds. We would therefore, request you once again to settle our insurance claim on top priority basis and without any further delay and send us the full cheque of our insurance claim alongwith interest upto the date cheque by our company (21 months as on today) alongwith consequential losses suffered by our company due to extreme delay in payment of our due insurance claim and the subsequent shortage of funds in our company.

Hope to receive your most immediate action and reply. Thanking you,

Yours faithfully,

For GUPTA POLYESTER PVT LTD.

(DIRECTOR)

Encl: Letter No. GPPL:777:92 dated 16.9.92 addressed to M/s. Santosh Synthetic & Silk Mills Pvt. Ltd., Bombay

C.C. to: Mrs. H.K. Ganatra, Dev. Officer, N.I.C. Bombay,

The Regional Manager, NIC, Bombay.

The Grievance Cell, Head Office, N.I.C, Calcutta".

13. FROM the afore -mentioned letter which also refers to the previous correspondence, it is clear that the Appellant had furnished all the details with

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respect to the stocks and also submitted the balance -sheet. There are no cogent reasons as to why the surveyor had addressed letter dated 13.11.1992 (Exhibit ''C'') to National Insurance Company Limited stating that the balance sheet for the year ending 31.3.1990 had not been submitted. It is clear from the record that the loss of stock on account of fire was on 11.12.1990 which is subsequent to the period for which the Surveyor had asked for the balance -sheet. The first Respondent had not replied to the letter dated 11.8.1992 in which the Appellant had enclosed the photo -copies of Challans and bills of yarns purchased, as well as the Challans and bills of suitings sent to the process house and received from the process house. It is repeatedly stated by the Appellant that the total value of stocks as on date of fire was 20.56 lakhs. The first Respondent is silent about the bills and challans produced by the Appellant Company. We do not see any reply to this letter from the record filed before us.

14. FOR all the afore -mentioned reasons, i.e. (a) placing reliance on the Survey Report of United India Insurance Co. Ltd. which has insured Gala No. B -37 and not B -36; (b) absence of any assessment of stock by their own Surveyors, M/s. R.N. Thacker & Co., repeatedly asking for the same information, inspite of the Appellant Company giving all the details of the bills and challans and the stock statements vide their letter dated 11.8.1992; we are of the considered view that the repudiation by the first Respondent Company is completely baseless. Secondly, we address ourselves as to whether the first Respondent Insurance Company adhered to the IRDA (Protection of Policyholders'' Interests) Regulations, 2002?

15. REGULATION 9 of the IRDA (Protection of Policyholders'' Interests) Regulations, 2002 reads as under: "9. Claim procedure in respect of a general insurance policy.

....

(2) Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor as the case may be, shall inform in writing the insured about the delay that may result in the assessment of the claim. The surveyor shall be subjected to the code of conduct laid down by the Authority while assessing the loss, and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than six months from the date of his appointment to furnish his report.

(3) If an insurer, on the receipt of a survey report, finds that it is incomplete in any respect, he shall require the surveyor under intimation to the insured, to furnish an additional report on certain specific issues as may be required by the

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insurer. Such a request may be made by the insurer within 15 days of the receipt of the original survey report.

Provided that the facility of calling for an additional report by the insurer shall not be resorted to more than once in the case of a claim.

(4) The surveyor on receipt of this communication shall furnish an additional report within three weeks of the date of receipt of communication from the insurer.

(5) On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the additional survey report, as the case may be."

16. IN the instant case, it is not in dispute that the fire accident took place on 11.12.1990 and that the Surveyor filed his report only on 22.7.1992, which is 1 1/2 years subsequent to the date of incident. It is clearly stated in Regulation 9(2) that the Surveyor should communicate his findings to the Insurer within 30 days of his appointment with a copy of the report furnished to the insured and the surveyor, shall, under intimation to the insured, seek an extension from the Insurer for submission of his report. But in no case shall a surveyor take more than six months from the date of his appointment to furnish his report. This Regulation has been completely violated in the instant case as the Surveyor was appointed on 12.12.1990 but the report was furnished by him only on 22.7.1992, which is one year and seven months after the date of his appointment.

17. IT is stated in Regulation 9(5) that if the insurer, decides to reject the claim, it shall do so within a period of 30 days from the receipt of the survey report. In the instant case, the Survey Report was furnished on 22.7.1992, whereas the repudiation was on 2.2.1994, i.e. one and a half years after the date of filing of the report which is again in violation of the Regulation 9(5) stipulated by the IRDA.

18. TAKING into consideration that this is the second round of litigation; the fire accident is of the year 1990; the repudiation is based on the Survey Report of United India Insurance Co. Ltd. which is, per se, incorrect; the Surveyor of the Respondent Company did not assess the stock; and that it would be practically impossible to get the stocks assessed today after 25 years have elapsed; we find it a fit case to rely on the Bank Statements and the stocks indicated in the Statement dated 30.11.1990, which is of a few days prior to the fire accident, to decide the quantum and value of stock present in Gala No. B -36 at the time of cause of action. At this belated stage, it is not possible to assess the extent of damage done to the yarn and the fabric. In all probability, some quantity would have been re -useable. Having regard to all these factors, instead of remanding the case to the State Commission, we are of the considered view that awarding

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50% of the claim amount with interest at 6% per annum from the date of filing of the Complaint till the date of realisation, would meet the ends of justice. In the result, this Appeal is allowed and the Order of the State Commission is set aside, directing the first Respondent to pay 50% of the claim amount with interest at 6% per annum from the date of filing of the Complaint till the date of realisation together with costs of 10,000/ -. Case against the other Respondents is dismissed.

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