(1994) 10 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

GUPTA TEXTILE MILLS APPELLANT

Vs

CHAIRMAN, UNITED INDIA INSURANCE CO. LTD RESPONDENT

Date of Decision : 18-10-1994

Acts Referred:

Citation : 1994 2 CPC 329 : 1995 1 CLT 343 : 1995 1 CPJ 28

Hon'ble Judges : S.S.Sandhawalia , S.Kulwant Singh J.

Advocate : S.K.Agarwal , Pradeep Bedi

Final Decision : Allowed

Judgement

1. M/s. Gupta Textile Mills have preferred this complaint against their insurers on the allegation that they had taken out insurance cover vide Policy No. 110704/11/90/229-230 and Cover Note No. 34636 dated 26th of April, 1990 presumably for period of one year. It is the case that during the subsistence of the coverage, a fire broke out in the factory premises on the 30th of July, 1990. The services of the Panipat Fire Brigade were requisitioned vide Report No.61, dated the 30th of July, 1990 and the relevant police post was also informed of the occurrence vide Daily Dairy No. 20, dated 31st of July, 1990. The complainants lodged their claim on the basis of an estimated loss of Rs. 2,50,000/- and sought the appointment of a Surveyor. It is their case that during the survey proceedings they lodged a loss statement agreeing to accept a claim of Rs. 1,17,824/- vide Annexure 5, dated the 6th of August, 1990. It is the allegation, that the relevant documents were duly supplied to the Surveyor M/s. D.K. Taneja and Associates and they further used the salvage material as per the advice given by the insurers officials and their Surveyor.

2. THE primal grievance projected is that whilst the complainants were awaiting the release of their claim atleast to the extent of Rs. 1,17,820/-, they received the letter Annexure 9, dated 24th of June, 1991 from the insurers suspecting the record with regard to the intake of the raw material and asking them to clarify, why such an inordinately large quantity was kept in process just three days prior to the fire, which was many times the normal goods in process earlier.

Apparently, dissatisfied with the clarification given, the insurers vide Annexure 9-A, informed the complainants that their claim had been approved only for Rs. 6368/- and they were required to furnish the requisite discharge vouchers for accepting the same. Aggrieved thereby the complaint has been preferred seeking a sum of Rs. 1,17,824/- alongwith interest @ 24%. In the written statement on behalf of opposite party No. 1, three preliminary objections have been raised, to which reference now becomes unnecessary. On merits the broad factual matrix of the insurance cover and the subsequent fire are not disputed. But it is in terms denied that the complainant was ever forced to accept or agree to the claim of Rs. 1,17,000/- odd. The despatch or receipt of any letter dated the 8th of August, 1990 from the complainants is also expressly controverted. Somewhat repetitively, it is reasserted that the complainants had not the least rightful claim to Rs. 1,17,000/- odd, but infect only for a marginal sum of Rs. 6368/- without in the least indicating its basis. The plea is that since there is only disagreement on the quantum of the claim, the only remedy is under the arbitration Clause 13 of the policy, to which resort should be made by the complainant. In reply to para No. 8, it is denied that the complainant was awaiting the release of the amount of Rs. 1,17,864/-. However, without indicating anything whatsoever or referring to any surveyor''s report either it is cryptically stated that the large claim submitted by the complainant was approved only for Rs. 6368/- and a discharge voucher was sent to the complainant vide communication dated 27th of November, 1991. A somewhat detailed replication had been filed reiterating the complainant''s stand.

In support of their case, the complainants have chosen to put in the affidavit testimony of Tikka Ram, the proprietor of the concern, apart from relying on Annexures 1 to 17 annexed to the complaint. The deponent was cross-examined on behalf of the opposite party and conceded that two surveyors had assessed the loss and further that he had not brought any record to substantiate in detail the claim that Rs. 1,17,000/- was assessed by any of the surveyor.

3. IN rebuttal of the affidavit of Sh. C.S. Tandon, the Divisional Manager of the insurers was placed on the record. Curiously therein in a cryptic two lines paragraph, it was stated that the loss of the complainants was assessed to the tune of Rs. 6368/- without indicating the names of the surveyors or the mode or method of arriving at that figure. Additional testimony was that of Shri J.K. Sharma, partner of M/s. J.N. Sharma and Company, Chartered Accountants, who without indicating the date or manner of his appointment, deposed to the submission of their report dated 4th of May,1991 nearly 11 months after the occurrence of the fire. Both the deponents were cross-examined on behalf of the complainant and the latter Shri J.K. Sharma was recalled for a further cross-examination at great length by the learned Counsel for the complainant Shri S.K. Aggarwal, which made sizeable dents in his testimony. The complaint was dismissed in default because of persistent non-appearance on 29th of May, 1992 and even an application for review of the order was rejected on the 17th of July, 1992. However, the National Commission whilst holding that the complainant was

clearly at fault in not appearing before the State Commission either in person or through Counsel, observed that in the larger interest another opportunity for decision on merits may be given. It was thereafter that Shri J.K. Sharma was resummoned and crossexamined on 5th of April, 1994.

4. MR. S.K. Aggarwal, the learned Counsel for the complainant had primarily pinned himself on Annexures V & VII being a loss statement dated the 6th of August, 1990 purporting to be signed by one Siya Ram and and a letter addressed to the Branch Manager of the insurers by the complainant, dated the 8th of August, 1990, it was sought to be argued that the virtually unproved document Annexure 5, being the loss statement was the agreed settlement of the claim at Rs. 1,17,824-54P. It was contended that though the loss was higher, the proprietor of the claimant concern was forced to agree to this figure and the insurers were at fault in not adhering to the same. On the other hand on this aspect, Mr. Bedi highlighted that in the written statement itself, it was expressly and repeatedly denied that any letter dated the 8th of August, 1990 was ever sent or received and even the proprietor Shri Tikka Ram in his affidavit testimony had not even chosen to refer far from proving or exhibiting Annexures V and VII above mentioned. It was the case that the alleged agreed figure of Rs. 1,17,000/- and odd was a canard and a figment of the complainants imagination. On this aspect, the stand of the insurers has to be necessarily up-held. It is common ground that without loss of time, the insurers had got conducted a spot survey and also appointed Shri D.K. Taneja and Associates for a final survey report, which was done in detail and submitted on the 16th of August, 1990. The authenticity of the said report has not been challenged and therein after full calculation, the loss has been assessed at Rs. 47,310/- only.

5. IN the aforesaid context, the complainant''s stand that the insurers had agreed to a figure of Rs. 1,17,000/- and odd is completely without any foundational base. It deserves highlighting that even at its fact value, a mere loss statement by the insured cannot be construed as binding on the insurers. What is more, Annexure V, which is now made the core of the complainant''s stand was not at all sought to be established and even Tikka Ram, proprietor did not care to refer to the same nor was the alleged signatory of the said document Siya Ram produced. The ancillary document Annexure VII dated the 8th of August, 1990 was in terms denied by the insurers and despite that not at all established. There is thus nothing on the present record, which can even remotely sustain the somewhat first tall plea of the complain ants that any agreement about the loss had been arrived at 10 days before even the submission of the report of D.K. Taneja on the 16th of August, 1990. This apart the matter is concluding by the following concession of Tikka Ram in his statement: "Against my claim of Rs. 2,50,000/-, the surveyor has assessed the sum at Rs. 1,17,000/-. The surveyor had told me about this assessment, but no written communication was sent to me either by him or the Company. At this time I have not brought any record to substantiate in detail my claim that Rs. 1,17,000/- were assessed by the surveyors."

The aforesaid would conclude the matter and the more so by the undisputed fact that in their detailed report M/s. D.K. Taneja had assessed the loss only at Rs. 47,310/-. IN view of this the first stand of the complainants must necessarily fail.

6. HOWEVER, the complainants are on a surer footing on their alternative plea. It was contended by Mr. Aggarwal that in any case the first surveyor M/s. D.K. Taneja had in their detailed report assessed the loss as noticed above. HOWEVER, even now it remains shrouded in mystery as to why there was any need of over-ride that report and as to what is the basis for arriving at a figure of Rs. 6368/- by the insurers on the 22nd of November, 1991 vide Annexure 9-A, after nearly one year and four months of the occurrence of the fire on the 30th of July, 1990. It was the submission that the insurers had acted malafide in attempting to wriggle out or over-ride the report of their own appointed surveyor Shri D.K. Taneja and without indicating how and why they arrived at a mysteriously low figure. As a matter of law, the stand was that the insurers were pre-cluded from appointing successive surveyors or investigators without a valid reasons, therefor. Pointed reliance was placed on the observations of the National Commission in I (1993) CPJ 104 (NC) ''Sri Venkata Padmavathi Raw & Boiled Rice Mill v. The New India Assurance Co. Ltd. & Anr.; and III (1993) CPJ 1781 ''M/s. Satsandh Cotton Factory v. The Oriental Insurance Co. Ltd. and Anr.'' and II (1993) CPJ 872 ''Mohd. Rafiq Abdul Shakur Kachhi v. Regional Manager, National Insurance Co. Ltd. & Ors.! There is patent merit in the aforesaid stand. The insurance cover is not in doubt nor is the factum of the fire in factory on the 30th of August, 1990, which stands admitted or in any case fully established by the report of the fire brigade and the information lodged with the police, as also by the record of the spot surveyor and later by the report of Shri D.K. Taneja, the appointees of the insurers. The said report dated the 16th of August, 1990 is relied upon by the opposite party itself and is a detailed and authentic document. It records the contents of the insurance policy giving the relevant cover, the general information about the case, the occurrence of the fire, the extent of damage and their observations, the cause of fire and the ultimate assessment of the loss on the basis of detailed figure work. It is recorded therein that the fire took place on the 30th of August, 1990 at 4.30 p.m. and the fire brigade arrived at the site at about 5.05 p.m. and it took about 1-1/2 hours to extinguish the same and heavy damage was caused to the stocks of cotton. It relied on the preliminary spot survey got conducted by the insurers by Mr. Gupta, who had also found the occurrence to be genuine. It was recorded that probably some loose connection in the flexible electrical wires for supplying power to the electrical motor gave a spark, which ignited the cotton fluff and the same being combustible material spread quickly. It was even opined that the insured had very slightly under-insured their stock and after taking into account the fully burnt cotton and the water damaged one and the salvageable one, the ultimate figure arrived at was Rs. 47,310/- in the following terms: "In our opinion the above is a fair and reasonable assessment of loss suffered by the insured. In the above assessment of loss, 1530 kg. of saved cotton lying in detached godown

has not been considered as saved stocks of Section I."

In the aforesaid context what deserve highlighting is the fact that in the detailed written statement filed on behalf of the Insurance by competent Counsel, there is not the least hint of any suspicion attaching to the aforesaid first report of Shri D.K. Taneja nor any indication of the need of any subsequent further survey, nor any reference to them for cryptically averring that one year and five months after the fire on the 22nd of November, 1991, the insurers had arrived at the figure of Rs. 6368/- as the loss on the basis of which they sought a complete discharge of their liabilities. It bears highlighting and repitition that in view of this pleading any subsequent attempt to wriggle out of the assessed loss by M/s. D.K. Taneja is entirely beyond the insurers pleadings. It is well settled that evidence beyond the pleadings cannot be even looked at, but apart from such strictitude, there appears nothing worth the name, which can possibly over-ride the assessment of insurers own appointed surveyor. What is significant here is the affidavit of their own witness Shri C.S. Tandon, Divisional Manager. Even in his own affidavit, he did not indicate as to how and why the first report of Shri D.K. Taneja was in any way suspect and who and when was later appointed and what was relied upon for assessing the loss at a mere Rs. 6368/- only. His averment in paras 2 and 3 of his affidavit is a cryptic one, which is virtually unworthy of notice.

7. IN the aforesaid context the subsequent report of M/s. J.N. Sharma is virtually beyond the pleadings and without any indication why the same was necessary and in what circumstances the subsequent enquiries became necessary. However, what meets the eye is the belated nature of the said report. Admittedly, it was rendered eleven months after the occurrance on the 4th of May, 1991. IN his detailed cross-examination Mr. J.K Sharma did not indicate the date or reason of the appointment of M/s. J.N. Sharma nor an meaningful reason as to why he differed from the earlier spot report of Mr. Gupta and the detailed final survey report of Shri D.K. Taneja. INdeed it is stated that he has no idea as to what the insurer and Company''s stand was with regard to the claim. He further admitted that he could not say whether the whole of Section 1 of the complainant''s factory was destroyed because he had entered the scene for the purpose of assessment much later. He further admitted that Mr. Taneja had rendered the report soon after the loss and he had perused the same and the solitary reason for differing therefrom was some alleged disparity betwixt the earlier intake of raw material and that preceding the week before the fire. He denied that Annexure V to the petition was either received by Mr. Taneja or was made available to him. The tel-tale concession further was that when he came to the scene the goods had already been sold and the bills had already been made and he could not say anything regarding what transpired be twixt the insured and the first Surveyor M/s. D.K. Taneja Associates. Equally the witness was at sea as to the reasons why the INsurance Company appointed the 3rd surveyor Shri S.K. Mittal, though he denied that he had been appointed only to give a finding that the fire was caused by the insured themselves. He also denied that he had been engaged to over-ride the earlier report of Mr. Taneja. In the light of

the aforesaid background even the legal stand taken on behalf of the complainant''s on the basis of precedent noticed above is not without merit. Herein what perhaps deserves repetition is that even in the written statement, the insurers neither indicated the reason for doubting their own surveyor Shri D.K. Taneja nor the circumstances in which the need to secure some subsequent reports arose or the figure work on the basis of which they had computed the loss a year and five months after its occurrence. The authorities noticed above are a warrant for the principle that successive appointments of surveyors to over-ride the preceding re ports without reason cannot be justified and have to be looked at with suspicion unless thoroughly well explained and conesquently would amount to a patent deficiency in the insurance services extended out. Herein that finding seems to be inevitable and the deviation at least from Shri D.K. Taneja''s report is patently untenable.

8. TO finally conclude, the complainant is entitled to relief within the consumer jurisdiction on the basis of the assessment arrived at by the insurer Company''s surveyor Shri D.K. Taneja at a sum of Rs. 47310/-. It is equally well established on the record that the insurer had procrastinated in the settlement of the claim and it was virtually repudiated and computed at a sum of Rs. 6368/- only on 20th of November, 1991. Within this jurisdiction, it is well settled that the insured is entitled to be indemnified from the date of the arising of the cause of action, which herein would be the 30th of August, 1990. For the fore-going reasons, this complaint is allowed and it is directed that the insurers shall pay the aforementioned sum of Rs. 47310/- with interest at the rate of 18% with effect from the 30th of July,1990 till the date of realisation. The complainant''s are also entitled to their costs, which are assessed at a sum of Rs. 3000/- only. It is further directed that the computed sums shall be tendered within one month from today, failing which compliance will be enforced under the stringent provisions of Section 27 of the Act. Complaint allowed.

