(1998) 05 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

HIM ISPAT LTD. APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. RESPONDENT

Date of Decision : 05-05-1998

Acts Referred:

Citation : 1998 2 CLT 105 : 1998 2 CPJ 696

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is by the complainant challenging order of District Forum, Gurdaspur dated February 26,1997 whereby the complaint was dismissed, which was filed against New India Assurance Co. Ltd.

2. THE complainant. Him Ispat Ltd. a Public Ltd. Company took an insurance policy from the Branch Office of New India Assurance Company, Pathankot on April 15,1991 for a sum of Rs. 10 lacs. THE insurance policy commenced on April 15, 1991 and was upto April 14, 1992. THE machinery and equipments of the Company situated in Village and Post Office Kandrori, District Kangra (H.P.) were insured. A fire took place in the main Mill Block in the month of March, 1992 i.e. on the night of 21st and 22nd March, 1992. THE complainant is alleged to have suffered loss to the tune of Rs. 20 lacs. THE claim was made before the Insurance Company who appointed Assessor. As per report of the Assessor, the loss suffered was found to the tune of Rs. 4,09,390/-. THE Company, however, paid a sum of Rs. 2,57,382/- vide cheque dated October 30, 1994. THE said cheque was accepted under protest by the complainant vide letter dated November 30,1994. As per allegations, a sum of Rs. 1,52,008/- was deducted by the Insurance Company on the excuse that lesser amount of premium was received from the complainant on account of previous insurance policies in respect of the insurance of the building and machinery. Such policies were for 4/5 years prior to the policy in dispute. Thus, it was alleged that there was deficiency in rendering service on the part of the Insurance Company by illegally withholding the remaining payment. THE stand taken up by the Insurance

Company in their version was also to the same effect that lesser premium was charged in respect of the previous insurance policies. Total amount of short premium was to the extent of Rs. 1,51,958/- as per details of the policies and the amount of short premium given in the version as reproduced in the impugned order. It was further stated that amount of Rs. 82,674/- was waived while effecting the recovery. THE District Forum accepted the stand of the Insurance Company and dismissed the complaint. THE District Forum observed while making reference to Order VIII, Rule 6 of the Code of Civil Procedure that the same was not applicable to the proceedings under the Consumer Protection Act and it was not appropriate to allow payment of the withheld money and thereafter leave the Insurance Company to claim the aforesaid amount in the separate suit in the Civil Court. It was observed that it was for the complainant to agitate the mater in a Civil Court. Reference was made to the decision of Tamilnadu State Commission in "Chief Engineer, Madras Region, Tamilnadu Electricity Board & Anr. v. Smn Consumer Protection Council & Anr.", The only question involved in the present case is as to whether there was deficiency on the part of the Insurance Company in rendering service in not making the payment of loss suffered by the complainant as assessed by the Surveyor and the second question co-related therewith is as to whether the complainant should be relegated to his remedy to the Civil Court or the Insurance Company. We have given due consideration to the respective arguments addressed by Counsel for the parties. The ratio of the decision in Chief Engineer''s case (supra) is not applicable to the case in hand. The dispute therein was with respect to the tariff whether it should be 0.37 paise per unit or Rs. 1.15 paise per unit. It was held that such a matter could not be agitated in the Consumer Court. The position in the present case is entirely different. There is no question of challenge to the tariff. As far as deficiency in rendering service is concerned, after Surveyor had assessed the loss, the Company was duty bound to offer the said amount to the complainant. Since the said amount was not offered, there was deficiency in rendering service. The amount offered was less, which was accepted under protest.

Assuming for the sake of argument that there was a genuine dispute with respect to the nature of the construction of the building whether it was ''A'' Class or otherwise and giving a finding on that point to re-determine the premium payable as per tariff. The fact cannot be lost sight of that the insurance policy is issued after collecting premium in advance and it was open to the Insurance Company to verify the nature of the building and machinery, which was sought to be insured and then to determine the actual tariff chargeable. If the Insurance Company came to the conclusion that for the previous years, lesser premium was claimed, it would be open, if permissible under the law to claim the amount of short premium by filing separate suit against the insured. Unless and until such a dispute is settled, it cannot be said that some amount was payable to the Insurance Company in respect of the previous policies or in respect of the policy in question. Such a matter could not unilaterally be decided by the Insurance

Company and it could not deduct the same from the amount of compensation payable with respect to any particular loss suffered. The other judgment referred to is of the Tamilnadu State Commission in "R. Sethuramn v. The Manager, Indian Overseas Bank & Another", III (1993) CPJ 1614. That was a case where dispute was with respect to the amounts due on taking into different accounts of the parties. It was held that such a dispute could only be decided by the Civil Court of competent jurisdiction. The Insurance Company cannot take any benefit from the ratio of the decision of the Tamilnadu State Commission as referred to above. Present is not a case where accounts are required to be scrutinised to find out the exact figure payable to any of the parties, the complainant or the Insurance Company. It may be observed that in the proceedings under the Consumer Protection Act, no relief can be granted to the opposite parties either by way of set off or otherwise.

3. THE very fact that the Insurance Company did not settle the claim on the amount determined by the Surveyor within a reasonable period per se amounts to deficiency in rendering service. Deduction of the amount on account of short premium was arbitrary particularly when the same related to policies which were not for the relevant period when the loss occurred. Although no firm finding is required to be given, at this stage it could only be observed that the short premium of the policies period of which had already lapsed cannot be adjusted against the claim for the loss occurred in the currency of another policy. Thus, the Insurance Company was not at all justified in deducting a sum of Rs. 1,52,008/- and paying the remaining amount of Rs. 2,57,382/-. THE complainant is entitled to the amount, which was illegally deducted alongwith interest thereon by way of compensation. The Supreme Court in "United India Insurance Co. Ltd. v. M.K.J. Corporation", III (1996) CPJ 8 (SC) has held that compensation by way of interest against the Nationalised Insurance Company should be upto 12% p.a.

4. FOR the reasons recorded above, this appeal is allowed. Order of the District FORum is modified with a direction to the Insurance Company to pay the deducted amount of Rs. 1,52,008/- with 12% p.a. interest thereon w.e.f. the date three months after survey report was submitted. Since survey report is not filed, this date will be determined by the Insurance Company while making the payment or in the execution proceedings. The complainant will get costs of both the Courts, which are assessed at Rs. 2,000/-. Appeal allowed.

