
(2016) 12 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

Case No : 1178 of 2014

JAGRUT NAGRIK & ANR.

APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. & ANR.

RESPONDENT

Date of Decision : 13-12-2016

Acts Referred:

Citation : (2016) 12 NCDRC CK 0006

Hon'ble Judges : K.S. Chaudhari

Advocate : P.V. MOORJANI, KAPIL CHAWLA

Final Decision : Appeal Allowed

Judgement

1. This appeal has been filed by appellant against order dated 30.09.2014 passed by Gujarat State Consumer Disputes Redressal Commission (in short "the State Commission) in Complaint No. 38/11 - Jagrut Nagrik & Anr. Vs. The New India Assurance Co. Ltd. & Anr. by which, complaint was partly allowed.

2. Brief facts of the case are that the complainant no. 2/appellant no. 2 obtained insurance policy from OP/respondent for a sum of Rs. 1,25,00,000/- for a period 4.3.2008 to 3.3.2009 for coverage of 3 shops and goods. On 20.2.2009, fire took place and caused damage to the goods. OP appointed surveyor and OP remitted only 50,02,011/- to the complainant against total loss of Rs. 87,87,735/-. Alleging deficiency on the part of OP, complainant no. 1/appellant no. 1 on behalf of complainant no. 2 filed complaint before State Commission. OP resisted complaint and submitted that payment was made as per surveyor's assessment in full and final settlement which was accepted by complainant; so, there was no deficiency on their part and prayed for dismissal of complaint. Learned State Commission after hearing parties allowed complaint partly and directed OP to pay 9% p.a. interest on Rs.50,02,011/- from 23.11.2009 till date of actual payment along with compensation of Rs. 25,000/- and cost of litigation of Rs.15,000/- against which, this appeal has been filed.

3. Heard Authorized Representative of the appellants and Counsel for the

respondents finally at admission stage and perused record.

4. Authorized Representative for the appellants submitted that learned State Commission has allowed complaint only partly without affording opportunity to the complainant to lead evidence; hence, appeal be allowed and impugned order be set aside and matter may be remanded back to learned State Commission. Learned Counsel for respondents also admitted that evidence was not filed before State Commission by both parties and he has no objection in allowing appeal and remanding matter to State Commission for deciding complaint after allowing parties to lead evidence.

5. Complainant was to prove loss to the tune of Rs. 87,87,735/- and OP was to prove payment of Rs.50,02,011/- in full and final settlement of the claim and for that purpose, both parties were required to lead evidence. Perusal of impugned order does not reveal that parties have filed any evidence before State Commission or even after giving opportunity to the parties, they failed to file evidence. In such circumstances, as per submission made by the parties, it can be inferred that learned State Commission decided complaint without affording opportunity to the parties to lead evidence which is contrary to law and in such circumstances, impugned order is liable to set aside and matter is to be remanded back to learned State Commission to decide complaint afresh after giving opportunity to the parties to lead evidence.

6. Consequently, appeal filed by appellant is allowed and impugned order dated 30.09.2014 passed by learned State Commission in Complaint No. 38/11 - Jagrut Nagrik Vs. The New India Assurance Co. Ltd. is set aside and matter is remanded back to learned State Commission to afford opportunity to both the parties to lead evidence and decide complaint afresh after giving an opportunity of being heard to the parties.

7. Parties are directed to appear before State Commission on 17.01.2017.