(1994) 03 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

JALAN TRADERS APPELLANT

Vs

National Insurance Co. RESPONDENT

Date of Decision : 05-03-1994

Acts Referred:

Citation : 1994 3 CPJ 432

Hon'ble Judges : S.N.Phukan , A.C.Bora J.

Advocate : C.N.Sahewalla , A.K.Goswami , K.R.Khound

Judgement

1. THE present petition has been filed against the Insurance Company, namely, National Insurance Company. THE complainant has established a shop and also took financial assistance from the bank. THE shop was insured with the Opposite Party for a sum of Rs. 5,00,000/-, Rs. 4,80,000/- for goods and Rs. 20,000/- for furniture and fixtures. THE premium was paid regularly. THE shop was destroyed as a devastating fire took place at Tinsukia on 3.4.90 and the fire lasted for about 12 hours. It has been stated in the petition that in the shop the complainant used to keep stock of black-tea and no other materials. THE complainant informed the Insurance Company and a Surveyor was also appointed. According to complainant, the Surveyor took biased attitude and did not receive the document from the complainant. THErefore, all the documents were furnished to the opposite party No. 3 on 7.8.90. Inspite of repeated requests, the claimt was not settled by the Insurance Company. THE Insurance Company also wanted some vouchers and photocopies of these vouchers were also given. Ultimately by a voucher dated 30.11.92 the Insurance Company paid an amount of Rs. 4,15,000/-. Hence the present petition has been filed claiming the balance of Rs. 48,000/-, with interest amounting to Rs. 1,95,000/- from 1.9.90 to 30.11.92 arid Rs. 2,00,000/- for business loss. THE copy of the Insurance policy which has been annexed as Annexure-I and also the letter of the banker to the Insurance Company as Annexure-II. A certificate from the Director, Fire Service has been annexed as Annexure-5. In the written objection filed by the Insurance Company a plea has been taken that this Commission has no jurisdiction and that the matter requires further enquiry, inasmuch as, the

complainant has not produced all the documents. THE statement that the Surveyor took a biased view, has been denied. It has also been stated that as the claimant received the amount offered by the Insurance Company the quantum of compensation cannot be agitated again.

2. HEARD Mr. Sahewalla, learned Counsel for the complainant and Mr. K.R. Khound for the Insurance Company. Mr. Sahewalla, learned Counsel for the petitioner has drawn attention of this Commission to the case decided by Gauhati High Court in M/s. Oriental Fire and General Insurance Company v. M/s. BOTCO, Badarpur, Cachar, (1989) 2 GLR 399 wherein it was held that in case the insurer disputes the claim of total destruction of insured property and refuses to pay the entire insured money, the part of the insured money to the extent of the value of the quantum of undisputed destroyed property should be paid immediately for non-payment of the balance it is for the insurer to establish that total property was not destroyed. The Court also held that when the entire insured goods were totally destroyed by accidental fire the Insurance Company is bound to pay the insured money unless it can prove that the stock-intrade, furniture etc. prior to the date of accidental fire were removed by the insured on that some portion of the insured goods was saved when the fire broke out.

In the case in hand, the above ratio is applicable, inasmuch as, there is nothing on record to show that any part of the shop or goods was not destroyed.

3. MR. Khound has submitted that subsequent payment was made as gesture of good will though the Surveyor assessed lesser amount. The report of the Surveyor is not available. We Bail to understand how the Surveyor could assess lesser amount, as from the facts it is very clear that entire shop with the goods, and furniture etc. were destroyed by fire. We, therefore, hold that the complainant is entitled to get the full amount of Rs. 48,000/-. Regarding loss of business Mr. Khound has rightly urged that the complainant is not entitled as there was no insurance to cover this loss. We accept the contention of Mr. Khound.

4. THE occurrence took place on 23.4.90 and the amount of Rs. 4,52,000/- was paid on 30.11.92, i.e., more than two years. Giving a concession of six months for processing the matter, we are of the opinion that the complainant shall be entitled to get interest @ 12% on the whole sum of Rs. 5,00,000/- for a period from 1.11.1990 to 29.11.1992. Further the claimant shall be entitled to get interest at the rate mentioned above on the sum of Rs. 48,000/- from 30.11.1992 till date. Opposite parties are allowed three months time to pay the amount and if it is not paid within three months it shall bear an interest at the above rate. THE petition is accordingly disposed of. Complaint allowed.