(2011) 10 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Jaswantiben Kantilal Shaha APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Citation : 2011 4 CPJ 616

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Final Decision : Revision Petition dismissed.

Judgement

1. BY way of present revision petition there is challenge to order dated 15.10.2009, passed by State Consumer Disputes Redressal Commission, Mumbai (for short as ''State Commission''). Vide impugned order, appeal of the petitioner for enhancement was dismissed.

2. ALONG with present petition, petitioner has also filed an application for condonation of delay.

3. AS far as application for condonation of delay is concerned, petitioner in the application has nowhere mentioned the period of delay. However, as per office report, there is delay of twenty-nine days. For the reasons mentioned in the application, delay is condoned and application stands allowed.

4. PETITIONER''s/complainant''s case is that damage was caused to the stock insured due to heavy flood on 26th July, 2005. The stock stored was hypothecated with respondent No. 2/opposite Party No. 1. Said stock was insured as per insurance policy taken by respondent No. 2 for and on behalf of trader, late Kantilal Shaha, with respondent No. 1. Tea and edible oil are the only commodities which were covered under the insurance Policy (tea was insured for the sum of Rs. 3,80,000, whereas edible oil was insured for Rs. 20,80,000, total amounting to Rs. 24,60,000). Due to floods, total loss to the insured goods was caused and, accordingly, insurance claim was made. Respondent No. 1 repudiated the claim on the ground of falsity and its assessment was based on Surveyor''s report.

5. BEING aggrieved, petitioner filed a complaint which was partly allowed towards the claim for damage caused to the stock of tea only to the extent of Rs. 3, 80,000. In addition, Rs. 5,000 were awarded as compensation towards mental and physical torture and Rs. 3,000 as costs.

6. NOT satisfied with the order of District Consumer Forum, original complainant filed an appeal for enhancement. State Commission, vide impugned order dismissed the appeal. Hence, this revision.

7. WE have heard learned Counsel for the petitioner and learned Counsel for the respondent No. 1.

8. LEARNED Counsel for petitioner has contended that both the Fora below committed an error since they did not take into consideration the Stock Statement issued by respondent No. 2, supporting the case of petitioner with respect to loss of edible oil. Flood water can do havoc and so called barrels of edible oil cannot be immune from such effects.

9. IT is also contended that invoice issued by Global Trade Links, Stock Statement issued by respondent No. 1 for the period March, April and June, 2005 as well as ledger account and Purchase Register, supports the case of petitioner.

10. LASTLY, it is contended that inspection conducted by Surveyor appointed by respondent No. 1, cannot be of any evidentiary, value, since no notice was given to the petitioner and record shows that Surveyor visited the premises different from the godown in which the insured stocks of the petitioner were kept. Thus, State Commission has failed to consider the material piece of evidence and as such impugned order is liable to be set aside.

11. ON the other hand, it is argued by learned Counsel for respondent No. 1, that as per Surveyor''s report there was no actual damage caused to the edible oil and there was no business activity. Further, as per photographs produced before the District Forum, it was observed that, considering the situation it does not appear that oil was stored in barrels and these photographs were submitted by petitioner himself. On perusal of the photographs, District. Forum held that Surveyor observed that "barrels filled in by edible oil cannot be washed away from the enclosed premises" appears to be correct. Since, it is a finding of fact, present revision petition is not maintainable.

12. DISTRICT Forum in its order dated 13.10.2008 has held: "On perusal of the photographs submitted in the record, the Surveyor''s observation that ''barrels filled in by edible oil cannot be washed away from the enclosed premises'' appears to be correct to the Forum. The water had logged in the premises in which the goods were stored for about 36 hours. Therefore, loss of boxes in which tea was kept along with the other goods are easily liable to be lost because of the water logging. However, the edible oil stored in big barrels of 200 ltrs. cannot be lost in the view of this Forum. Considering the statement of claim submitted by the complainant, the value of sales for the financial year ending on

31.3.2005 was shown in his account as ''Zero''. Sale for the period 1.4.2005 to 25.7.2005 was shown at Rs. 19,20,000. This is an aspect relating to their business. While considering the loss caused to the complainant as claimed in the complaint before the Forum, this Forum is of view that as per the statement given to the Bank in June, 2005 loss with respect to Tea caused to the complainant is to the tune of Rs. 6,94,000. However, insurance cover for the same was only to the extent of Rs. 3,80,000. The Forum, therefore, is of the view that the Insurance Company was liable to pay loss of Rs. 3,80,000 to the complainant towards loss caused to his tea."

13. WHEREAS, State Commission while disposing of the appeal observed: "In the instant case, in support of its claim complainant did not adduce any evidence except filing copies of the documents which remained unproved. Complainant heavily relied upon the statement of trader late Kantilal Jagjivan Shaha, recorded on 8.8.2005 and the alleged Panchanama. However, said Panchanama cannot be held as the Panchanama drawn by Revenue Officer soon after the incident. Admittedly, Complainant and her husband late Kantilal Shaha were not present at the time of incident and it appears that late Kantilal Shaha hade made a statement on 8.8.2005, supra, giving the details as to the stock which inter alia included tea powder, soap, chili powder, tamarind power oil drums, rava and maida, etc. Same details were incorporated in the Panchanama and which per se, therefore shows that it is not the Panchanama recorded soon after the incident to assess the loss and the damage caused due to flood, but, it is the Panchanama recorded after the statement of late Kantilal Shaha dated 8.8.2005. Hence, it could be inferred that no Panchanama of the Revenue Officer of the actual incident, if drawn, is available. The certificate given by Gram Panchayat Ladavali dated 8.8.2005 considering its formal nature and vagueness, is of no use to the complainant. Besides that, the Panchanama and the certificate of the Gram Panchayat, supra, are not tendered in evidence under Section 13 of the Consumer Protection Act, 1986 so it is the case of alleged photographs. 5. On the contrary, the fact that on lodgement of the claim, the Insurance Company appointed the Surveyor who actually visited the spot, carried out the investigation and arrived at conclusion that the claim is falsely made. The surveyor noticed that there was no actual damage caused to the stock, no business activities including movement of the goods or storing of any stock was noticed prior to the event and, accordingly, considering the relevant aspects as per its factual findings, by its report dated 2.8.2006, informed the Insurance Company that the claim was not genuine. Said report is duly supported by affidavit of the Surveyor. Mr. V.B. Kulkarni. Against this there is no evidence in rebuttal adduced on behalf of the Complainant. 6. Admittedly, the Insurance Policy was taken for the goods which were hypothecated with the Bank. As per the hypothecation deed, as far as its Clause 12 is concerned, the trader was supposed to hand over monthly statement of the stocks with the Bank. Against this the Bank in its written statement and as supported by the Affidavit by its Manager-Ankush Dattatraya Takke, claimed that they were totally unaware of

alleged stock of tea powder worth Rs. 3,80,000 and edible oil worth Rs. 20,80,000. Had there been any stock at the place this Bungalow No. 157 at Ladavali, the Bank would have certainly furnished the details thereof on the basis of its record. Complainant also failed to produce any records of actual stock on the day of incident of flood. In the circumstances, we find that the report of surveyor remained unimpeached and thus, the repudiation of the claim by the Insurance Company cannot be faulted as arbitrary and without any basis. Thus, no deficiency in service on the part of the Insurance Company could have been alleged."

14. PETITIONER has furnished only the invoices with regard to the purchase of edible oil, but there is not even a single document to show as to when and on which dates the edible oil was sold. All the documents placed on record by petitioner relates to the purchases made by him. There is not even a single document showing the sale of any quantity of the edible oil.

15. UNDER these circumstances, in view of the findings of the facts given by two Fora below, we do not find any ground or reason to disagree with the reasoning given by the State Commission.

16. PRESENT revision petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (for short as Act''). It is well settled that power of this Commission as a Revisional Court are very limited and have to be exercised only, if there is some prima facie jurisdictional error in the impugned order.

17. RECENTLY, Hon''ble Supreme Court in Mrs. Rubi (Chandra) Dutta v. M/s. United India Insurance Co. Ltd., II (2011) CPJ 19 (SC)=IV (2011) SLT 303=2011 (3) Scale 654, has observed: "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora."

18. IN the present petition, no jurisdiction or legal error has been shown to us to call for interference in the exercise of power under Section 21(b) of the Act, since, two Fora below have given cogent reasons in their order which does not call for any interference nor they suffer from any infirmity or revisional exercise

of jurisdiction.

19. IT is not that every order passed by Fora below is to be challenged by a litigant even when the same is based on sound reasoning.

20. ACCORDINGLY, present revision petition is not maintainable being devoid of any merits. The same has been filed just to waste the time of this Commission. Accordingly, we dismiss the petition with costs of Rs. 10,000 (Rupees ten thousand only).

21. PETITIONER is directed to deposit the costs by way of cross-cheque for a sum of Rs. 10,000 in the name of "Consumer Legal Aid Account" within four weeks from today.

22. IN case, costs are not deposited within the prescribed period, petitioner shall be liable to pay interest @ 9% p.a., till realization.

23. LIST on 18th November, 2011 for compliance. Revision Petition dismissed.