(2006) 06 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

JYOTHI AGENCIES APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 21-06-2006

Acts Referred:

Citation : 2006 2 CPC 700 : 2006 4 CPJ 30 : 2007 1 UC 475

Hon'ble Judges : J.

Final Decision : Appeal dismissed

Judgement

1. PARTIES in this Order are referred to according to their ranking in the complaint filed before the District Forum.

2. THIS appeal is by the complainant challenging the order of the District Forum dismissing the complaint of the complainant. The complainant is a firm carrying on the business of sale of electronic goods, steel and moulded furnitures at Bellary. The stock-in-trade kept at the business premises of the complainant was insured with the opposite party (for short,"O.P."). There was a fire accident in the premises on 3.4.2004. In the said accident, the stock in trade kept in the business premises was burnt. The liability of the O.P. under the Insurance policy is Rs. 10,00,000. After the accident the complainant made a claim before the O.P. for payment of compensation since the policy was in force as on the date of the accident. The O.P., after the receipt of the claim, appointed a Surveyor to assess the loss. The Surveyor assessed the net loss at Rs. 7,57,388 after deducting Rs. 2,43,000 towards "under insurance". The O.P., after the receipt of the Report, offered the complainant to receive a sum of Rs. 7,57,000. Thereafter, the complainant received Rs. 7,57,000 through cheque without any protest. A copy of the voucher is produced as Exhibit ''P-9''. After receiving the said amount, the complainant filed a complaint before the District Forum alleging "Deficiency in Service" on the part of the O.P. According to the complainant deducting a sum of Rs. 2,43,000 towards "under insurance" by the O.P. amounts to deficiency in service.

The complainant has not disputed the Surveyor''s Report. The complainant also has not disputed the assessment made by the Surveyor with regard to the value of the stock-in-trade found in the business premises at Rs. 13,39,504. The liability of the O.P. under the Policy is limited to Rs. 10,00,000. Therefore, there is an Under Insurance of the stock-in-trade to the extent of Rs. 3,39,504.

3. THE learned Counsel appearing for the complainant brought to our notice the terms and conditions of the policy. Relying on the Clause under the heading "Special Condition of Average". He contended that the O.P. is not correct in deducting certain amount towards Under Insurance. According to the said clause, if the value of the property held in stock at the commencement of destruction is collectively of greater than the sum insured, then the insured shall be considered as being his own insurer for the difference and shall bear a rateable proportion of the loss accordingly. It further says that if the sum insured is not less than 85% of the collective value of the property insured, this condition shall not apply. THE calculations made in the report of the Surveyor clearly go to show that the sum insured only comes to 74.66% of the total value of the property involved and that is less than 85%. THErefore, the Clause applies. Hence, deduction of a sum of Rs. 2,57,998.50 towards Under Insurance is held to be proper. Further, when the complainant has received the amount offered by the O.P. without any protest he is estopped from filing any complaint alleging deficiency in service on the part of the O.P. THErefore, in our view, the impugned order does not call for any interference. In the result, we pass the following Order : The appeal is dismissed. Appeal dismissed.

