
(2012) 11 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Kali Ram Goyal

APPELLANT

Vs

Union Bank of India And Anr.

RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Citation : 2013 2 CPJ 383

Hon'ble Judges : VINEETA RAI J.

Final Decision : Appeal allowed

Judgement

1. THIS First Appeal has been filed by Kali Ram Goyal (hereinafter referred to as the "Appellant") being aggrieved by the order of the State Consumer Disputes Redressal Commission, Delhi (hereinafter referred to as the "State Commission") which had dismissed his complaint against the Union Bank of India and the National Insurance Co. Ltd. (hereinafter referred to as "Respondent Nos. 1 and 2" respectively) who were opposite parties therein. Facts

In his complaint before the State Commission, Appellant had contended that he is involved in the business of purchase and sale of cotton, Niwar, cotton canvas, etc. for which he had taken two insurance policies in respect of the two premises owned by him where he had stored the stocks. One policy was for a sum of Rs. 10 lakh (i.e. Rs. 9,70,000 for stocks and Rs. 30,000 on F.F.F.C.) whereas the other policy was for Rs. 15 lakh (i.e. Rs. 14,90,000 on stocks and Rs. 10,000 on F.F.F.). On 8.5.1999 at about 4.30 a.m., Appellant received a telephone call that a fire had broken out in his premises and he immediately rushed to the spot and found that the entire stock lying in the premises including the ledger books and items had been completely burnt and destroyed. The Fire Brigade subsequently controlled the fire and a certificate to this effect was also given by the concerned department. The local Police was also informed about the incident who registered a complaint at Police Station, Bara Hindu Rao vide Daily Diary No. 8I -B dated 8.5.1999. Appellant also sent a letter to Respondent No. 2/Insurance Company giving information about the fire. One G.S. Narang was appointed as Surveyor to whom all the required documents were supplied. However, instead of settling the

claim, Respondent No. 2/Insurance Company kept on raising one objection after another. Being aggrieved, Appellant filed a complaint before the District Court which was dismissed on grounds of jurisdiction. Appellant thereafter filed a complaint before the State Commission stating that during negotiations between him and Respondent No. 2/Insurance Company, a sum of Rs. 6,35,647 had already been paid to him but an amount of Rs. 8,64,353 was still outstanding which it was requested, Respondent No. 2/Insurance Company be directed to pay along with compensation for mental torture, harassment and inconvenience.

2. THE above contentions were contested by the Respondent No. 2/Insurance Company on the grounds that Appellant had taken an insurance policy only in respect of the ground floor premises whereas the loss had taken place mainly on the first floor of the premises and secondly, the insurance policy had been taken to cover godown risk whereas the premises were being used as a shop where sale and purchase was being conducted. Further, Appellant had been asked on several occasions to furnish details and papers concerning his business but he failed to submit the same despite repeated requests. The Surveyor had on the basis of a detailed survey, assessed the loss as Rs. 6,35,647 which was paid to the Appellant. The State Commission after hearing both parties and on the basis of evidence produced before it, dismissed the complaint by observing as follows: After according careful consideration to the aforesaid rival claims of the parties as well as the letter dated 24.3.2000 and the report of the Surveyor who assessed the loss to the tune of Rs. 6,35,647 in spite of the fact that the premises as per the report of the Fire Department were being used as a shop - cum -office and stock lying there was partly damaged, we feel inclined to believe the report of the Surveyor who after going through all the documents had assessed the loss. Complainant has already been compensated as to the loss as assessed by the Surveyor.

Foregoing reasons persuade us to dismiss the complaint being devoid of merit.

Being aggrieved, the present First Appeal has been filed by the Appellant.

3. LEARNED Counsel for both parties made oral submissions. Counsel for Appellant stated at the outset that the Surveyor's report which was not before the State Commission, was placed on record for the first time following directions of this Commission vide order dated 25.3.2008. It was further submitted that the ground of repudiation of the claim as communicated by the Respondent No. 2/ Insurance Company, namely; that the stocks were insured only in respect of the ground floor premises and loss had taken place mainly on the first floor is not factually correct. In fact, a perusal of the insurance policy clearly indicates that it covered both the godowns on the ground floor and premises No. 639, Pul Mithai, Azad Market, Delhi. Thus, both premises were covered under the insurance policy. Further, the Surveyor appointed for the purpose while confirming the value of the stocks in the insured premises was Rs. 27,51,102, erroneously concluded that most of the damaged goods were on the first floor and were only partially damaged without taking into account the fact that even partial damage

to goods like clothes, Niwars render them as being useless since they could not be sold.

4. COUNSEL for Respondent on the other hand stated that the Surveyor had given a detailed report citing convincing reasons for evaluating the goods affected in the fire and also deducting 45.84% because of underinsurance of the stocks by applying the Average Clause. The claim figure was, therefore, rightly arrived at as being Rs. 6,35,647 which was paid to the Appellant. The State Commission had, therefore, rightly dismissed the Appellant's complaint. We have heard learned Counsel for both parties and have gone through the evidence on record. We note at the outset that as stated by the Appellant, it is a fact that the report of the Surveyor was not produced in evidence before the State Commission and was placed on record for the first time following the order of this Commission dated 25.3.2008. Therefore, it is apparent that the State Commission reached its conclusions on the basis of the contentions of the parties without actually examining the Surveyor's report or perusing the insurance policy document which was in evidence before the State Commission. After having carefully gone through both the documents, we note that the insurance policy clearly indicates that both the premises i.e. the godown as well as the shop were insured with the Respondent No. 2/Insurance Company and, therefore, it is not correct as stated in the Respondent No. 2's letter of repudiation that both the premises were not covered under the insurance policy. We have also carefully perused the report of the Surveyor. While it is a fact that the Surveyor had assessed the total value of the stocks as being Rs. 27,51,102 and had rightly deducted 45.84% on grounds of under insurance, but we are unable to accept the findings of the Surveyor in respect of the actual value of the goods damaged in the fire because as contended by the Appellant, we agree that even peripheral damage of 15% to 25% to items stocked in the premises like clothes and cotton canvas would actually render these worthless and without value because they could not be sold thereafter. Keeping in view the above facts, the total value of the goods damaged in the fire after deductions on account of under insurance would work out to Rs. 14,89,996 (i.e. Rs. 27,51,102 - - Rs. 12,61,105). We, however, consider it reasonable to permit a further deduction of 15% on account of depreciation from this amount (which works out to Rs. 2,23,449) apart from Rs. 45 -84% already deducted due to under insurance. To sum -up, after deducting the amount of depreciation (Rs. 2,23,449) and a further amount on account of under -insurance (Rs. 12,61,105), the net amount liable to be indemnified under the insurance policy works out to Rs. 10,37,657. Since, Appellant has already received Rs. 6,35,647 out of this amount, Respondent No. 2/Insurance Company is directed to pay the Appellant the remaining amount of Rs. 4,02,010 with interest @ 6% per annum from the date of complaint till its realization in final settlement of the insurance claim. The First Appeal is allowed on the above terms.