(2015) 08 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

Case No : 127 of 2009

KANHA TRADING CO AND ORS — APPELLANT

Vs

NEW INDIA ASSURANCE CO LTD — RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Citation : 2016 1 CPJ 83

Hon'ble Judges : V K Jain, B C Gupta

Advocate : Jitender Mehta, Abhinav Sareen, P K Seth

Judgement

[1] The complainant, M/s. Kanha Trading Company, stated to be a proprietorship concern dealing with textile fabrics, shoes and other items, obtained a standard fire and special perils policy No. 230700/11/05/00206 for the period 28.04.2005 to 27.07.2005 from the opposite party, New India Assurance Company for an assured sum of ?1,16,44,314/- for their stock-in-trade, whose description was stated as textile fabrics 1079000 mtrs. @ ?8.25/mtr. and 17,358 pairs of shoes @ ?158/-. The case of the complainant is that the stocks at their premises were damaged as a result of floods on 30.06.2005. They intimated the loss to the Insurance Company vide their letter dated 03.07.2005, following which a surveyor was appointed to assess the loss. The complainant sought payment of claim of ?1,16,44,314/- which was the sum insured in the policy. In the consumer complaint, the complainant have narrated the details of the correspondence between them and the insurance company, saying that the documents asked for by the surveyor and the insurance company were supplied to them from time to time, but they failed to adjudicate the claim within reasonable time. The complainant even approached the High Court of Gujarat at Ahemdabad by way of Special Civil Application No. 9898/2008 for relief against the OP/respondent. Vide order dated 01.08.2008, the Hon''ble High Court directed that the claim of Insurance shall be decided within a period of one month from the date of the order. The complainants were also given liberty to resort to proper proceedings as available in law, if the decision of the Insurance Company was against them.

[2] However, the OP Insurance Company repudiated the claim on 12.09.2008 on the following grounds:- "As directed by the court in the order dated 1/8/2008, your above referred claim has been re-examined by the Competent Authority. It is observed that the claim repudiation letter dated 29.05.2008 is already sent on the policy address by Registered A.D. (copy of the said letter is enclosed) the proof of receipt of the same is available with us. On re-examination of the matter it is hereby informed that the Competent Authority has upheld the earlier decision of repudiation of liability under the said claim on the following grounds:-

1. General Condition No. 1 Mis-representation of material particulars, since the provided documents do not establish insurable interest of the policy holder on the damaged goods.

2. General Condition No. 6 (b) as no books of accounts could be produced. Further, no evidence of bills/books of accounts being lost in the flood is produced.

3. General Condition No. 8 since purchase bills of the stocks submitted by you are found to be of non-existing concerns and thus fraudulent."

[3] The complainant have stated that they never received letter dated 29.05.2008 as stated in the above reference from the Insurance Company. Later on, they ascertained from the Department of Posts that the said letter was returned to the sender undelivered on 05.06.2008. The complainant further says that the OP Insurance Company had drawn four samples of clothes at random and sent the same to MANMADE Textile Research Association (herein referred to as ''MANTRA'') Surat, whose report indicated that this was an irreversible damage and hence, a case of total loss. The action of the OP Insurance Company in repudiating the claim was, therefore, not in order.

[4] The complaint has been resisted by the Insurance Company by filing reply to the complaint in which they stated that the claim was fraudulent, unsubstantiated and baseless. The surveyor had assessed the loss at ? 25,09,980/- but observed that the same would be admissible subject to submission of genuine purchase bills, provisional balance-sheet duly certified by the CA, Bank statement of the concerned suppliers to verify the insured bank statement etc. However, the original purchase bills were never produced by the complainant in spite of repeated reminders saying that the same had been lost in the flood waters. A representative of the insured had promised to produce the original bills for the purpose of settlement of the claim, but this was not done. The Insurance Company has further stated that the documents submitted by the complainant in support of their claim were found to be fake. The addresses of the suppliers to whom the complainant had allegedly paid money, could not be verified. In the bank reconciliation statement also, there were entries of cheque numbers only and there were no details as to whom the payment was made. The bank statements of the concerned suppliers were also not produced, rather the suppliers were untraceable. Further, the complainant had disposed of the salvage on their own without taking the insurance company or the surveyor into

confidence. However, the complainant has pleaded that permission had been given for the same by the insurer vide letter dated 28.07.2005, but the said letter was never produced by them.

[5] The OPs have also raised the plea that the complainant was a commercial entity and hence, the said insurance policy had been taken for a commercial purpose and thus, the complainant do not fall under the definition of ''consumer,'' within the meaning of section 2(d) of the Consumer Protection Act, 1986. The OPs have further taken the plea that the issue regarding documents relating to purchase of goods, the names and description of the suppliers etc. could not be resolved in summary proceedings under the Consumer Protection Act, 1986 and hence, the matter should be referred to a Civil Court of competent jurisdiction so that proper evidence is led by both the parties in support of their contentions. OPs have further taken the plea that there had been no deficiency in service on their part because the Insurance Company appointed a surveyor promptly to ascertain the extent of loss after receiving the intimation from the complainant. The said surveyor tried his best to obtain the requisite documents from the complainant but he could not do so. The claim had, therefore, been rightly repudiated as indicated in detail in repudiation letter dated 12.09.2008 issued by the Insurance Company.

[6] At the time of hearing before us, the learned counsel for the complainants mainly relied upon the technical testing and analysis report made by the MANTRA, which is stated to be an organisation linked to the Ministry of Textiles, Government of India. The report says that from visual observation and chemical treatment, it could be concluded that the stains on the fabric were not completely removed and it had a number of holes at random places. The pH of the fabric was highly acidic and the tenacity of the fabric was less than 4.0 g/den. The report says that it was an irreversible damage. The learned counsel stated that the Insurance Company should have allowed the claim based on the MANTRA report. He further stated that they had given photocopies of two bills to the surveyor duly certified. The Insurance Company was guilty of deficiency in service as they had not decided the claim in accordance with law, despite directions from the Hon''ble High Court. The learned counsel for the OP Insurance Company, however, stated that the claim had been rightly repudiated as the complainants were not able to produce proper documents in support of having purchased the said material.

[7] The main point that arises for our consideration is whether the complainant was required to be given any compensation under the terms and conditions of the Insurance Policy in question. In so far as the factum of floods is concerned, the same has not been denied by the Insurance Company. The report of technical testing and analysis made by MANTRA does say that there was an irreversible damage to the stock in question. However, the report submitted by the surveyor G.K. Jadhav is a material document to be considered in the present complaint. In the said report, the surveyor stated that despite their repeated requests to the

complainant by letters, telephone calls and meetings with their officials, they failed to produce the original bills regarding the purchase of material before them. In a meeting held on 25.07.2005, one Mr. Alok, stated to be a representative of the complainant stated that the insured will produce the original bills within one hour, but he failed to do the same. The complainant took the stand that the bills had been lost in the flooded premises. The insured provided Xerox copies of some bills vide their letter dated 16.07.2005, but after verification and confirmation of the said copies of the bill, it was found that those were not genuine bills as the supplier and location mentioned in the bills did not exist. The surveyor stated that they sent registered letters to the concerned suppliers requesting them to confirm sales to M/s. Kanha Trading Company, but the said letters were received back with the remarks that address/party was not traceable. They even visited Bhiwandi to locate the supplier of grey cloth on 05.08.2005 but found that the address given in the bill did not exist. The insured submitted a bank reconciliation statement of HDFC Bank, but there were entries of only cheque numbers in the bank statement and hence, it was not possible to find out as to whom the payment was made. The insured had not submitted the provisional balance-sheet as on the date of the loss duly certified by the C.A.

[8] In their evidence affidavit filed by Mr. K.G. Desai on behalf of the OP also, it has been stated that the Xerox copies of the bills which were submitted by the complainant were not found genuine as the suppliers and the location mentioned in the bill did not exist / were not traceable. In order to further verify the genuineness of the existence of the suppliers at Bhiwandi, an independent investigator Mr. Jigar Patel was appointed. A copy of the report of the said investigator dated 12.09.2005 has been placed on record, according to which the address and the existence of M/s. Sitaram Fabrics, H/220, Jagmohan Shivdayal Market, P.K. Road, Bhiwandi, appeared to be wrong/not available as per Government post office, courier service and local enquiries. The complainants claimed to have purchased 1079000 mtrs of grey rotex fabrics vide bill No. 69 dated 20.04.2005 for ?89,01,750/- from the said supplier.

[9] In order to verify the genuineness of purchase bill No. 119 of M/s Ambika Dealers, 24/1 Azad Nagar, Noida, U.P. from where the complainant claims to have purchased 17358 pairs of PVC sports shoes amounting to ?27,42,564/-, M/s So-Men Media Private Limited investigators were appointed. After making enquiries from the local police, shops at different sectors at Noida, tempo stand etc., the said investigator reported that the address on bill No. 119 was found to be fake/non-existing. They also stated that the entire Noida region was indicated with sector numbers only.

[10] At the time of hearing before us, the learned counsel for the complainant was asked to explain as to why they could not procure duplicate copies of the purchase bills from the suppliers of the insured material, if the original ones were lost in the floods. However, no satisfactory explanation could be furnished on behalf of the complainants in this regard. The complainants could have produced

affidavits from the said suppliers as evidence of having purchased the goods under insurance, but they failed to do so. The insurance company have, therefore, rightly found the claim to be fraudulent and unsubstantiated. In their repudiation letter, the Insurance Company stated that the complainants failed to comply with policy conditions no. 1, 6(b) and 8. They have rightly observed that the provided documents do not establish insurable interest of the policy holder on the damaged goods and hence, there was violation of General condition No. 1. Further no books of accounts or evidence of bills etc. being lost in the floods were produced and hence, there was violation of general condition No. 6(b). The copies of the two purchase bills produced by the complainant were found to be of non-existing concerns and hence the claim was fraudulent and the insurance company was well within its rights to deny the same.

[11] Based on the entire facts and circumstances of the case, it is evident that the repudiation of the claim by the Insurance Company is in order and there is no deficiency in service on their part as they promptly deployed a surveyor to assess the loss and got due investigations carried out towards the claim. The consumer complaint in question is, therefore, ordered to be dismissed. There shall be no order as to costs.

