(2007) 04 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

KOCHAR WOOLLEN MILLS PVT LTD — APPELLANT

Vs

United India Insurance Co Ltd — RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

Citation : 2007 2 CPR 288 : 2007 3 CPJ 60

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao J.

Advocate : Preet Jeet Singh , S.P.Jain

Judgement

1. THESE two first appeals are preferred against the orders dated 15. 3. 2002 passed by the State Commission, Chandigarh in Original Complaints No. 56/1998 and No. 57/1998. M/s. Kochar Woollen Mills Private Limited is the complainant in Complaint No. 56/1998 and Complaint No. 57/1998 dealt with the case of its sister concern, M/s. Kochar Industries but it was wrongly titled by the State Commission as M/s. Kochar Woollen Mills v. United India Insurance Company Limited and Ors. Both these firms are engaged in manufacture of shoddy woollen fabrics using shoddy woollen yarn as the raw material. The manufactured products are blankets, blazers, industrial clothes, etc. Both the firms being sister concerns have been keeping the raw materials and finished products in the same premises, namely the factory at Sultan Wind Road, Amritsar.

2. FIRE Insurance Policies were taken by both the firms for the raw materials and finished products lying at the above premises from the respondents, the United India Insurance Company Limited. Five policies covering an insured amount of Rs. 71 lakh were in respect of M/s. Kochar Woollen Mills Private Limited whereas five other separate Insurance Policies for an insured amount of Rs. 35 lakh in respect of Kochar Industries. During the period of insurance, a major fire broke out on 12. 12. 1996 at the above premises. Insurance claim for an amount of Rs. 42. 72 lakh in respect of Kochar Woollen Mills Private Limited and another claim for an amount of Rs. 23. 30 lakh in respect of M/s. Kochar Industries were filed immediately. The Insurance Company appointed M/s. Mehta and Padamsey Surveyors Private Limited, New Delhi to verify and assess the loss so caused. The

Surveyors submitted report in respect of M/s. Kochar Woollen Mills Private Limited, on 1. 5. 1997 and as regards M/s. Kochar Industries Limited on 5. 5. 1997. Surveyor assessed the net loss after adjusting for under insurance and salvage at Rs. 28,53,450 in respect of M/s. Kochar Woollen Mills and Rs. 14,95,338 in respect of M/s. Kochar Industries Ltd. There is no dispute as regards the above facts between the parties. The Surveyors made it clear that goods of both the sister concerns were stored together without any clear physical demarcation. He has also made it clear that neither of the companies maintained stock register indicating the quantum of phsysical stock. However, the firms maintained cash book, general ledger, purchase journal, sales journal and purchase and sales invoices. They also filed up-to-date income tax returns as well as sales tax returns. In the absence of physical stock registers, the Surveyor calculated the opening stock on the basis of income-tax returns filed. He added the value of purchases made till the date of occurrence of fire and also added manufacturing expenses for the above period. After deducting the sales made during the above period he arrived at the value of stocks as on 12. 12. 1996, i. e. , the date of accidental fire. The calculations are shown at Annexures I and II of his report. In Annexure-III to his reprot, he also calculated the quantity of the stock affected by the fire, based on the average cost of production. Deducting the value of unaffected stock from the total stock, he arrived at the quantification of the loss. The loss was proportionately distributed between the two companies which, as stated above, worked out at Rs. 28,53,415 in case of M/s. Kochar Woollen Mills and Rs. 14,05,338 in case of M/s. Kochar Industries Ltd.

Despite the Surveyors report, there was no response from the Insurance Company for quite sometime. Instead the respondents appointed one Mr. Rajesh Nakra, Chartered Accountant, Ludhiana to investigate the claim once again. It is argued by the appellants that full cooperation was given to the second investigator. However, Mr. Nakra without any reason stopped contacting the appellants though all the necessary information and documents were given to him.

3. HOWEVER, 14 months after the incident of fire and after repeated letters to the respondents, respondents vide their letter dated 20th March, 1998 addressed to Mehta and Padamsey Surveyors raised only one query regarding the alleged discrepancy in the estimation of the unaffected stock (Vide Annexure II of the Surveyor''s Report). The respondents also informed the said Surveyor to attend the meeting at Delhi on 25th. On the very next day, the Surveyor M/s. Mehta and Padamsey replied giving his explanation about the so-called discrepancy in the quantum of unaffected stock and also stated that if for arguments sake, the respondents view is accepted, then the actual loss in fact would increase and not decrease. He also mentioned that perhaps there is no need for a meeting on the 25th. However, the respondents still desired to hold the meeting on the date as listed, namely on 25th March, it is not convenient for the Surveyor since he would be out of station on that date. There is no indication on record as to what reply was given to his letter of the Surveyor by the respondents. However, after

13 days, namely on 2nd April, 1998, the Insurance Company informed the appellants that they are prepared to pay "on account payment" to the extent of 60% of the claim recommended by the Surveyor. This amount comes to Rs. 17,12,049 in case of M/s. Kochar Woollen Mills Private Ltd. and Rs. 8,43,203 in respect of M/s. Kochar Industries. The letter further says that one M/s. J. N. Sharma, Chartered Accountant, New Delhi has been deputed to verify the appellants accounts and full cooperation may be extended to him. Cheques for the above amounts "on Account Payment" were issued on 6. 4. 1998.

4. WE have heard the arguments of both the parties and perused the records. The arguments of the appellants are that there was no case of respondents to further appoint second and third Surveyors without taking consent of the Controller as required under provisions of Sectin 64 UM of the Insurance Act. It is further argued that the only alleged discrepancy pointed out by the respondents in the first survey report is a minor difference in the quantum of unaffected stock; and that the Surveyors had satisfactorily explained this so-called discrepancy. He further argued that once the Insurance Company has agreed to pay 60% of the amount recommended by the Surveyor as "on account payment" (Emphasis ours) there is no case of the respondents to sit tight on the matter without any action. The only three issues that required our decision are : (a) Is alleged discrepancy in the quantum of unaffected stock being satisfactorily explained or otherwise; (b) When the respondents have agreed to make "on account payment" on certain conditions, which conditions are agreeable to the appellant, can they withhold payment of the 40%; (c) Are respondents justified in appointing the third Surveyor without finding any other defects in the first Surveyor''s report?

7. We answer on all the three issues in favour of the appellants. The first Surveyor and his report clearly indicated the basis on which he assessed the losses. He has gone through the purchase registers, sales registers, manufacturing account, etc. to arrive at these figures. Not only that the first Surveyor has mentioned that he has done so "after verifying the record". For example he has given the quantum of purchases from 1. 4. 1996 to 12. 12. 1996 (the date of the fire) at Rs. 1,50,60,642 as per records verified (emphasis ours). The appellants also in his written statement mentioned that the Surveyor has put his initials in this purchase and sales register in token of having verified these records. It is only for the first time after his appointment in April 1998, the third Surveyor M/s. J. N. Sharma asked for further details like month-wise purchases, month-wise sales, trial balance sheet as on 31. 3. 1997 (the period after the accidenal fire). It is settled law that Insurance Company appoint one Surveyor after another without assigning specific reasons for rejecting the report of the previous Surveyors. In tis case, no such reasons have been given, but the second Surveyor has been appointed almost one year after the report of the first Surveyor. Obviously, the Insurance Company wanted to verify all the accounts once again but without assigning any reasons.

5. FOR this, the only reason alleged is that there is a difference in the quantum of unaffected stocks as worked out by the firt Surveyor and as reported by the appellants themselves. For instance, it is pointed out that the first Surveyor has assessed the unaffected stock of cloth as 28,867 mtrs. whereas it is alleged that the corresponding figure reported by the appellants is 26,666. 03 mtrs. In offering an explanation, the first Surveyor mentioned correctly that if the appellants have reported the lesser figure of unaffected cloth and if that is to be assumed as correct, then the quantum of the affected cloth would have been higher than what is reported by the Surveyor. Without responding to this, the respondents chose to appoint within 15 days another Surveyor, Mr. J. N. Sharma. We, therefore, hold that there was no justification for appointing the third Surveyor.

6. ON the question of interpretation of "on account payment", while theoretically the respondent Company would be at liberty to verify the remaining claim and depending on such verification supported by proper reasoning, could pay the remaining claim. In this particular case, no valid reason has been brought on record as to why the remaining payment out of that recommended by the first Surveyor should be withheld. It is to be stated that second and third Surveyors/ investigators, namely Mr. Rajesh Nakra and Mr. J. N. Sharma respectively had not submitted their reports on the alleged ground that the appellants had not cooperated. It is further to be stated that all the documents which were required were given to the first Surveyor. Therefore, it was easy for the second and third Surveyors/investigators to verify those documents. The second and third Surveyors/investigators were Chartered Accountants. They had the benefit of all the documents of the appellants which were given to the first Surveyor, Mehta and Padamsey, and yet they failed to reassess the loss.

In view of the above discussion, we find the appointment of the later two Surveyors by the respondent and delaying the payment of the claim of the appellants amount to deficiency in service. Ten years have elapsed and the appellants have been put to great financial loss.

7. APPELLANTS have also pointed out that they were taking insurance policies from the respondent - Insurance Company for the previous 20 years and there was no justifiable ground for non-settling the claim as per the Surveyor report and consequently not paying it for years together. The learned Counsel for the appellants, therefore, submitted that punitive damages should be awarded in this case. In our view, this is not a fit case for awarding punitive damages. Hence, we direct the respondents to pay the remaining 40% of the claim as per the Mehta and Padamsey Surveyor report with interest at 12% p. a. from 1. 4. 1998, i. e. , 10 days after clarification given by the letter dated 23. 8. 1998 till date of payment along with costs assessed at Rs. 25,000. This order is to be complied within four weeks from date of receipt of this order. Both the appeals are allowed with the above directions. Appeals allowed.