(2004) 01 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

LIKHMA RAM SAHARAN APPELLANT

Vs

Branch Manager, United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 27-01-2004

Acts Referred:

Citation : 2004 3 CPJ 500

Hon'ble Judges : M.A.A.Khan , Sushma Tanwar J.

Final Decision : Appeal allowed

Judgement

1. HEARD. After having obtained a loan for house construction, the appellant had got a house constructed and insured the same with the respondent Insurance Company for Rs. 1,30,000/-. The case of the appellant was that on 20.6.1996 a heavy rainfall took place which flooded not only the tanks and ponds in the village but also substantially damaged a number of houses in the village including that of the appellant. The appellant duly submitted his claim to the respondent Insurance Company and requested them to get the damage verified and estimated by some Surveyor. The case of the appellant further is that no Surveyor was appointed by the respondent Insurance Company for sufficiently long time and the concerned authorities advised him to get the damage estimated/assessed by an authorised Engineer. Thereupon the appellant requested the Public Works Department to make the services of an engineer available to him to estimate/assess the loss/damage caused to the house. The AEN, PWD, Sub-Division, Nagur, vide his report Annexure 3, reported that the house has been substantially damaged due to heavy rainfall and flood. He accordingly assessed the loss at Rs. 56,700/-. Although the respondent does not appear to have seriously contested the factum of rain and floods causing damages to the residential house of the appellant, but at the same time pleaded that the rainfall and flood were not so heavy as to bring the damage/loss, caused to the insured property, within the purview of the terms and conditions of the policy.

2. THE D.F., however, held that the estimate made by the AEN, PWD was

somewhat on higher side and, therefore, decreed the claim of the appellant to the extent of Rs. 40,000/- only. Hence this appeal by the complainant for enhancement of the compensation for the damaged property. The learned Counsel has rightly pointed out that since the respondent has not seriously objected against the estimated/assessed loss/damage to the insured property at Rs. 56,700/-, as was reported by the AEN, PWD Sub-Division, Nagur, the D.F. should have awarded the damage in conformity with the report of the AEN. We find substance in the argument of the learned Counsel.

We find that the AEN, PWD had given a very detailed report regarding the loss/ damage caused to the insured property. When there was no evidence in rebuttal to such report, the D.F. should have accepted that material piece of evidence. Although a reference has been made to the report of the assessor but such report is not available on the record of the D.F.

3. IN view of the above the impugned order is modified in this manner that the claim accepted by the D.F. at Rs. 40,000/- is increased to Rs. 56,700/-. Rest of the order of the D.F. is sustained. Appeal stands allowed. Appeal allowed.

