(1992) 07 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

Lumax Industries Ltd. — APPELLANT

Vs

United India Insurance Co. Ltd — RESPONDENT

Date of Decision : 08-07-1992

Acts Referred:

Citation : 1992 2 CPJ 459 : 1992 2 CPR 445 : 1993 1 CLT 216

Hon'ble Judges : V.Balakrishna Eradi , A.S.Vijayakar , Y.Krishan , B.S.Yadav J.

Final Decision : Petition allowed

Judgement

1. -THE complainant had taken out five Insurance Policies operative from different dates - February, March, July and December, 1987 for sums ranging from Rs. 15 lacs to Rs. 30 lacs all totalling Rs. 1.10 crores.

2. ON the 6th of January, 1988, there was a fire in the Gurgaon factory of the insured in which it claimed to have suffered a loss of Rs. 80.72 lacs. The Surveyor appointed by the Opposite Party Insurance Company assessed the loss due to fire at Rs. 48.45 lacs (figures in the round). The Insurance Company, however, further determined the total amount payable under the insurance policy as Rs. 36.38 lacs. The Insurance Company, pending assessment of loss by the surveyor, made an ad hoc payment of Rs. 20 lacs against the insurance policy on the 21st of April, 1988 and released the balance amount of Rs. 16,37,819/-after obtaining discharge voucher on 31st August, 1989.

The insured in his letter of 31st August, 1989, while giving discharge by signing the disbursement voucher for Rs. 16,37,819/-, stated that they accepted the payment of this amount "without prejudice to our right to represent the case" (the amount appears to have been received by the insured on a subsequent date). On the 5th of October, 1989, the insured in two letters requested the insurer opposite party to provide details of deduction made from claim amounting to Rs. 12.08 lacs. In fact, they submitted that this amount had been withheld "without assigning any valid reason."

3. ON 12th of June, 1991, the respondent insurer refused to pay the balance of

claim stating that "no new facts have been brought out to reconsider the settlement already effected in August, 1989, which was against full and final discharge given by you" (the insured). It was further stated that "the settlement effected already is as per the C.I.C. guidelines where a breach of warranty material to loss is involved". Therefore, the insurer refused to reconsider the claim. Thereafter, the insured complainant filed a complaint before this Commission.

4. DURING the hearing, the respondent insurer took the plea that the present petitioner had received Rs. 36.38 lacs in full and final settlement and that it had given the discharge voucher accordingly. The insurer, therefore, argued that the insured complainant was now disentitled to re-open the question of payment of the balance of the amount with reference to the claim recommended by the surveyor. Secondly, the respondent maintained that the insured complainant had stored plastic material in the factories and thus committed a breach of warranty No. 54(a). It was further alleged that there was violation of warranty No. 72 regarding storage of inflammable materials. Consequently, the claim was sub-standard/ non-standard necessitating the deduction of 25% from the claim recommended by the surveyor. The complainant emphasised that while signing the discharge voucher of 31st August, 1989, he had specifically reserved the right to represent his case and that on the 5th October, 1989, he had pointed out that the deduction of Rs. 12.08 lacs by the respondent insurer had been made without assigning any valid reasons or furnishing details of the deductions and that thereafter it took one and a half years to reject the claim for the balance amount in June, 1991. He maintained that against his loss of Rs. 80.72 lacs and against the amount recommended by the surveyor appointed by the Insurance Company viz. Rs. 48.45 lacs, the deduction of Rs. 12.08 lacs was unjustified and arbitrary. The discharge voucher furnished by the insured on 31st August, 1989 was not in the paperbook and the Counsel for the respondent was unable to produce the same at the hearing. The vouchers actually filed by the respondent were those relating to the ad hoc payment of Rs. 20 lacs (Rs. 2 lacs plus Rs. 18 lacs). It was observed by the Commission from these vouchers of 21st April, 1988 that Rs. 2 lacs and Rs. 18 lacs (total Rs. 20 lacs) paid ad hoc were also "in full and final settlement of all claims" upon the Insurance Company even though they constituted only a part payment. This would indicate that the discharge vouchers are being got signed from insured routinely "in full and final settlement". Such a discharge could not have been given for a part payment on ad hoc basis.

5. WE cannot also overlook the fact that the complainant insured, while signing the discharge, had reserved his right to represent his case, the actual cheque, for which advance discharge was given by the complainant appears to have been received later. On the 5th October, 1989, it had asked for the details of the deductions made without assigning any reasons.

6. AS regards the claim being substandard/ non-standard due to breach of

warranty No. 54(a), the complainant had submitted that out of the five insurance policies. only one policy (No. 40701/01/ 1/634/87 from 28th March, 1987 to 28th of March, 1988 for Rs. 19 lacs), alone was subject to warranty No. 54(a). This warranty was not a part of the other four policies of insurance. The complainant further explained that the incorporation of this warranty in the policy was contrary to the proposal form submitted by him and in fact subsequently, after the fire accident, that is on 31.8.1989, a sum of Rs. 35,760/- was paid by him on account of the difference of premium between the fire policy with and without warranty No. 54(a). He also submitted that the staff and officers of the insurer had been frequently visiting his different units and they were aware of the production process and items stored and never objected the storage of the said plastic materials. The petitioner further averred that there was no warranty Clause 72 in the policies issued. The Counsel for the respondent could not clarify as to how warranty No. 54(a) governed the four policies of insurance when this warranty was not incorporated in the relevant policies of insurance. The only explanation that he was able to furnish at the hearing was that warranty No. 54(a) is a part of the standard form of insurance policies and therefore, if governed all insurance policies whether or not this warranty is actually incorporated in the particular insurance policy. He also could not clarify as to why the respondent insurer obtained subsequently the supplementary premium on one of the policies which contained this warranty clause. The averment of the complainant that there was no warranty No. 72 in the policies remained uncontested by the respondent insurer.

After perusing the records as well as taking note of what has been stated by the Counsel at the hearing, the Commission accepts the contention of the complainant that the deduction of Rs. 12.08 lacs from the amount payable to him under the policies of insurance was arbitrary and without justification and that there has been inordinate delay in the finalisation of the claim.

7. WE, therefore, hold that the complainant is entitled to recover under the policies of insurance, a sum of Rs. 12,07,606/- on account of loss sustained by it by fire. It shall also be paid interest @ 18% per annum from the date of expiry of three months after the fire accident viz., 6th of April, 1988, till the date on which the amount is actually disbursed to him. It will also be entitled to a compensation of Rupees Ten thousand for the inconvenience and harassment caused to it by unjustifiably withholding the above mentioned sum for a period of one and a half years. He is also allowed costs Rs. 3.00 Petition allowed.

