(1997) 06 NCDRC CK 0032

In the National Consumer Disputes Redressal Commission

Manager, New India Assurance Co. Ltd — APPELLANT

Vs

DEVAKRUPA COTTON TRADERS — RESPONDENT

Date of Decision : 25-06-1997

Acts Referred:

Citation : 1998 2 CPJ 302

Hon'ble Judges : A.Venkatarami Reddy , J.Ananda Lakshmi , K.Ranga Raos J.

Final Decision : Appeal partly allowed

Judgement

1. THE complainant is doing business'' in sale and purchase of all varieties of cotton under the name and style of M/s. Devakrupa Industries and took 11 policies from the opposite party-Insurance Company on 25.4.1992 covering the risk from 26.4.1992 to 25.5.1992 and paid premium of Rs. 5,581/- by cheque dated 25.4.1992 which was received by the opposite party- Insurance Company. On 27.4.1992 a fire accident took place in the business premises of the complainant and cotton worth Rs. 3,00,000/- was damaged. THE same was informed to the opposite parties on 27.4.1992. THE loss is related to only two policies i.e. HY/G1/12013 and HY/G1/12014 for Rs. 1,50,000/- each. THE first opposite party came alongwith a Surveyor who prepared a report. THE complainant also submitted a written complaint assessing the loss at Rs. 3,00,000/-. THE Surveyor by name Seetharamaiah visited the spot on several occasions to process the matter. But although the opposite party- Insurance Company went on assuring that the matter would be settled, as there was no intimation from the opposite parties about the settlement of the matter, the complainant gave a written complaint on 15.1.1994 for which the second opposite party sent a reply stating that the claim of the complainant occurred within one day after assumption of the risk and it requires clearance from the Regional Office, Hyderabad. As the claim was not settled so far, the complainant filed the above complaint claiming a sum of Rs. 3 lakhs with interest at 13% p.a. and Rs. 10,000/- towards compensation.

2. THE second opposite party in its version stated that they received a telegram

on 28.4.1992 stating that a fire accident occurred on 27.4.1992. THE cover note was issued by Development Officer for the period from 26.4.1992 to 25.5.1992. THE complainant submitted duly filed claim forms on 11.8.1992. THE Surveyor after enquiry submitted a report on 20.2.1993 assessing the damage to the cotton stocks at Rs. 1,25,232/-. But the opposite parties asked the Surveyor to submit photos and original fire brigade certificate to consider the claim. But in the meanwhile the complainant wrote a letter on 15.1.1994 for which the opposite parties sent a reply on 3.2.1994 that the accident was within one day of the coverage of the risk and it requires clearance from Regional Office. It is the case of the opposite parties that their enquiry revealed that originally the cheque was date stamped as 27.4.1992 in favour of one S. Srinath and the date of the cheque was altered as 25.4.1992, and the name of S. Srinath was struck off, and the name of New India Assurance Co. was re-written, and that it was anti-dated after the fire accident on 27.4.1992 and even before the opposite party could settle the claim, the above complaint was filed and hence there is no deficiency of service on the part of the opposite parties as the claim is fabricated one and cover note was obtained fraudulently suppressing the material facts. On behalf of the complainant PWs 1 and 2 were examined and Exs. A-1 to A-11 were marked and on behalf of the opposite parties no witnesses were examined and Ex. B-1 was marked.

The District Forum held that no doubt that there is alteration in the date of issue of cheque. But nowhere the opposite parties have stated that no cover note was issued by them. On the other hand the amount was paid for issuing 11 policies by means of same cheque which was issued on 25.4.1992. But even according to the opposite parties, the cheque was received on 25.4.1992 and a cover note was issued bearing that date, except alleging that there was some fraud played by the Development Officer and others, no evidence was adduced to prove the same. The District Forum therefore, held that the cover note was issued covering the risk on 26.4.1992. Hence the risk is covered by the policy.

3. THE District Forum further held that as the opposite parties failed either to settle the claim or to repudiate their liability until the complaint was filed i.e. nearly after a period of 2 years, there is deficiency of service on the part of the opposite parties. Since the Surveyor''s report was not filed the District Forum directed payment of Rs. 3 lakhs with interest at 12% p.a. from the date of fire accident. Aggrieved by the said order, this appeal is preferred by the opposite parties.

4. IT is firstly submitted by the learned Counsel for the appellants that the complainant fraudulently got the cover note issued in collusion with the Development Officer. Except the allegation, there is no material on record. The Surveyor appointed also did not mention any such fraudulent conduct on the part of the complainant. The complainant fairly admitted that there was alteration with regard to the date and name of payee in the cheque. But as the cheque was received by the opposite parties on 25.4.1992 the cover note was issued from

26.4.1992 to 25.5.1992. Even in Ex. A-9 the letter written from the Regional Manager dated 3.2.1994 in reply to the letter of the complainant dated 15.1.1994 it was merely stated that since the accident occurred on the next day of the assuring the risk, the same must be approved by the Regional Office. Even at any point of time, the opposite parties did not plead that there is any fraud committed by the complainant. The Branch Manager did not file any counter and there is no proof that there is any collusion between the Development Officer and the complainant. Since the cover note was issued from 26.4.1992 and as the accident occurred on 27.4.1992, we are satisfied that the accident occurred during the subsistence of the policy and the claim is not vitiated by any fraudulent act of the complainant. The learned Counsel for the appellant filed before us a copy of the Surveyor report alongwith a memo dated 20.2.1993. The Surveyor assessed the loss with regard to the two policies under consideration at Rs. 1,25,232.90 Ps. The complainant did not adduce any evidence. In the absence of any other material adduced by the complainant, we direct payment of Rs. 1,25,232.90 Ps. with interest at 12 p.a. from 1.8.1992 i.e. after excluding the period of 3% months being the reasonable period for settling the claim, till the date of payment. The complainant/ respondent is at liberty to go to arbitration, as per the arbitration clause in the policy with regard to payment of balance amount of Rs. 1,74,767.10 Ps., for which course the opposite party-Insurance Company has no objection.

5. IN the result, the appeal is allowed in part and the opposite parties are directed to pay to the complainant a sum of Rs. 1,25,232.90 Ps. with interest at 12% p.a. from 1.8.1994 till payment. There shall be no order as to costs in this appeal. Appeal partly allowed.

