(2004) 07 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

MANKESHWAR BANGLE STORES APPELLANT

Vs

BRANCH MANAGER, ORIENTAL INSURANCE CO. LTD. RESPONDENT

Date of Decision : 31-07-2004

Acts Referred:

Citation : 2004 4 CPJ 314 : 2005 1 CLT 53

Hon'ble Judges : V.K.Agrawal , R.S.Awasthis J.

Final Decision : Appeal dismissed

Judgement

1. -THIS appeal under Section 15 of the Consumer Protection Act, 1986, is directed against the order dated 21.3.2001 in Complaint No. 79/98 by District Consumer Disputes Redressal Forum, Sarguja (hereinafter called ''the Distt. Forum'' for short) dismissing the appellant''s complaint.

2. UNDISPUTABLY the appellant carries on his business at Baikunthpur, Distt. Sarguja in the name of M/s. Mankeshwar Bangle Stores. The complainant had obtained Fire policy ''B'' from the respondent/insurer. It was alleged that during subsistence of policy on 11.10.1996, the said shop caught fire on account of short circuit resulting in damage to the shop and the bangles kept therein. The complainant, therefore, laid claim with the respondents/insurer. Surveyors B.S. Gambhir and P.K. Agarwal were appointed by the respondent/insurer. The claim of the complainant/appellant however was repudiated by the respondent/insurer. Hence, the complaint was lodged by the appellant claiming Rs. 1,99,070/- with interest as compensation. The complaint was resisted by the respondents/ insurer. According to them, the occurrence of incident of fire, as alleged by the complainant was found to be doubtful as per report of the Surveyor. The claim was, therefore, repudiated by the respondents by their letter dated 9.2.1998.

The Distt. Forum by the impugned order held that the incident of fire as reported by the complainant appears to be suspicious. The account regarding stock of bangles kept in the complainant''s shop was also not reliable. It was held that the material placed in the above regard by the complainant was discrepant and mutually contradictory. The complaint, therefore, was disallowed, with the liberty to the complainant/appellant to seek remedy in the Civil Court.

3. HEARD the learned Counsels for the parties and perused the record. It is mainly contended by the learned Counsel for the appellant that he has placed sufficient material on record to show that the incident of fire occurred in the shop of the complainant, and, therefore, he was entitled to compensation under the insurance policy issued by the respondents. The learned Counsel for the respondents/insurer, however, supported the impugned order.

4. IT is undisputed that the complainant/appellant obtained Fire policy "B" covering the risk of the plastic and glass bangles kept in his shop for the period from 27.10.1995 to 26.10.1996. According to the complainant, the incident of fire took place on 11.10.1996 resulting in loss to the bangle stock kept in his shop. IT may be noticed in the above context that the Surveyors B.S. Gambhir and P.K. Agarwal were admittedly appointed by the respondents/insurer to investigate and assess the loss. In his report dated 13.6.1997, Surveyor B.S. Gambhir has stated that there was no evidence regarding the loss to the stock of the complainant by fire. IT appears from the said report that the complainant informed the Surveyor Gambhir that he had repaired the shop and thrown away the salvage, under advice of Development Officer of respondent Mr. G.S. Virdi. However, the statement of G.S. Virdi, Development Officer recorded by the Distt. Forum negates the complainant''s version as above. He has stated that the complainant had not given any photographs, etc. of the damage to the shop. He has not been asked any question by the complainant, as to whether he had advised the complainant to repair the shop? The other Surveyor P.K. Agarwal has also in his report dated 13.11.1996, expressed his doubts about the genuineness of the incident of fire. He has stated that though the cause of incident as per complainant/insured was short circuit but he did not find any electric wiring on the spot. He has also reiterated the stand as above in his statement. There is nothing in his cross-examination to discredit his statement as above. It may further be noticed that no salvage of the damaged goods was produced by the complainant, before the Surveyor Gambhir, which also creates doubt about the truthfulness of the complainant''s claim that stock of bangles kept in his shop was damaged by fire. It may further be noticed that though the complainant claimed that he had purchased and got the bangles transported from Ganesh Bangle Stores, Firojabad. However, Shri Vinod Bansal, C.A. in his report as well as statement recorded by the Distt. Forum clearly stated that the record and documents produced by the complainant regarding alleged purchase as above were doubtful and did not appear to be reliable. He has given detailed reasons to discredit the books of account, vouchers, etc. produced by the complainant/ appellant in his report dated 12.11.1997, as also in his statement.

5. IT may also be noticed that though the complainant has averred in his affidavit that he was not present on the date of incident i.e., on 11.10.1996 and on the next date when he came to Baikunthpur, he went to the spot and then reported the matter of police. However, it is noticed that the incident was

reported to the police on 11.10.1996 itself by the complainant, as would be clear from the Sanha report, copy of which is placed in the record of Distt. Forum. Thus, the complainant''s version of his shop being gutted by fire is rendered doubtful. The reports of the Surveyor to that effect do not appear without justification.

6. IN view of above, the incident of the complainant''s shop being gutted by fire and the same as well as stock kept therein being damaged by fire is doubtful, as has been rightly held by the Distt. Forum after detailed appreciation of documents and material placed on record. IN view of above, the said findings of the Distt. Forum are affirmed. It may also be mentioned that if the claim of the complainant under the insurance policy has been repudiated bona fide and after due application of mind by the respondents/insurer on the basis of documents, and Surveyor''s report, then the repudiation as above would not constitute deficiency in service on the part of the respondents/insurer. Accordingly, the impugned order dismissing the complaint calls for no interference. This appeal has no substance. It is accordingly dismissed. Appeal dismissed.