(2003) 01 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

MANOHAR NATH PANDITA — APPELLANT

Vs

Oriental Insurance Co. Ltd. — RESPONDENT

Date of Decision : 06-01-2003

Acts Referred:

Citation : 2003 3 CPJ 709

Hon'ble Judges : M.Y.Kawoosa , ChVidya Sagar J.

Final Decision : Complaint disposed of

Judgement

1. COMPLAINANT is a migrant one. He had insured his residential building situated at Fatehpora Bungam. Tehsil and District Anantnag. It was two storeyed with Attic. He had insured the house with O.P. for an amount of Rs. 6 lakhs. House of the complainant was gutted in fire by militants on 2nd/3rd August, 1999. The complainant soon got the information about the loss of property, he raised the claim with the O.P. O.P. deputed Surveyor and FIR No. 249 of 1999 under Section 436 was lodged with Police Station Anantnag. O.P. deputed M.L. Saraf investigators to assess the loss. Admittedly, he assessed the loss at Rs. 4,97,247/- but filed unsigned report to O.P. The O.P. appointed Jehlum Investigators to investigate the matter and found that the complainant had himself managed to set his residential house on fire so he recommended for repudiation of the claim. O.P. on the other hand appointed Omkar Pajnoo another Surveyor to reassess the loss. Omkar Pajnoo reassessed the loss at Rs. 1,45,175/-. O.P. was summoned who filed the written version in which they supported the repudiation on the ground that the complainant had managed to damage the property himself. Secondly, the stand of the O.P. is that they cannot rely on the unsigned report of Saraf Surveyors/Investigators so they reappointed second Surveyor. Evidence has been recorded in this case.

2. HEARD learned Counsel for the parties. Learned Counsel for the O.P. has vehemently argued that the claim is not payable on the ground that the complainant had managed setting his building on fire himself which is clear from the Jehlum Valley Investigators. We have considered this part of argument . We

are not inclined to agree with the learned Counsel for the O.P. in this regard. Firstly, because the complainant was a migrant living in Jammu it would not have been easy for him to manage by setting his own building on fire. Secondly, there is no evidence on the part of the O.P. to justify the repudiation on this ground. It is apparent from the file that the occurrence has taken place in 8/1999. Saraf Investigators were appointed in December, 1999 and the survey conducted by the Saraf Investigators was from 20.12.1999 to 27.12.1999. They filed the report in 8/2000. The case of the O.P. is that they received a letter from some Ghulam Ahmed Beg that the complainant has managed to damage the property himself but Ghulam Ahmed Beg has not been produced as witness. His letter has not been placed on record. There is not a single witness from the locality who would support the plea of Jehlum Investigators. Admittedly Investigators, generally do not involve the complainant in the investigation. Jehlum Investigators were appointed long after the report of first Surveyor to investigate in the matter in middle of 2001. Amar Nath, Divisional Manager of the Company in his cross-examination has squarely admitted that the report of Jehlum Investigators is incomplete. That being so, the argument of the learned Counsel for the O.P. cannot sustain. The other argument of learned Counsel for O.P. is that the first report of Saraf Investigators is unsigned, it is why they have appointed Omkar Pajnoo to reassess loss. He reassessed the loss at Rs. 1,45,000/-. Learned Counsel for the complainant has rightly rebutted this argument by contending that there was no justification for the appointment of the second Surveyor. We have addressed ourselves to this argument also. We are inclined to agree with the learned Counsel for the complainant that the O.P. has not dealt with the case fairly. They have after seeing the huge amount of atleast Rs. 5 lakhs assessed by the Saraf Investigators, felt disturbed and they either got the case unilaterally investigated by the Jehlum Investigators and then got reassessed by Mr. Pajnoo. O.P. in the written version has not challenged the contents of the report of first Surveyor. The only objection about the report of the first Surveyor is that it is unsigned. There is no justification for the appointment of the second Surveyor that too after more than a year and half. Mr. Amar Nath in his cross-examination has admitted that Saraf Investigators are on their panel of Surveyors they continue to work with the O.P. It was very easy for the O.P. to call the Saraf Investigators to tell them to sign the report, may be they had forgotten to sign it before the submission of the report. Submission of the report by the Saraf Investigators to the O.P. is not denied. The report has come from a proper custody to the O.P. and from right person. Contents of the report have not been challenged. So there was no justification for the appointment of the second Surveyor. It squarely appears that the second Surveyor has been deputed deliberately to over shadow the first report of Saraf Investigators. First survey report is more acceptable because he has immediately gone on the spot and made assessment. While the second Surveyor was appointed after more than a year and half so it cannot be treated as accurate as the report of first Surveyor is. From the report of second Surveyor it is apparent that depreciation has been deducted at the rate of 1.75 per cent while Mr. Pajnoo in his cross examination has admitted that according to Rules only 75 per cent was to be deducted for the buildings old from 10-20 years. Here the house gutted admitted was of 14 years only. For this reason also the second report is not acceptable. There are catena of authorities in which it has been held that the report which is beneficial to the consumer should be relied on. In the light of above arguments we accept the first report and direct the Insurance Company to pay Rs. 4,97,247/- with 9 per cent interest from the date of 3 months after the first report was submitted.

The whole amount be paid to the complainant within a period of six weeks from today. Complaint disposed of.

