
(1996) 04 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

M.C.VIJAYAN

APPELLANT

Vs

BRANCH MANAGER UNITED INDIA INSURANCE CO

RESPONDENT

Date of Decision : 17-04-1996

Acts Referred:

Citation : 1997 1 CPJ 228

Hon'ble Judges : P.K.Shamsuddin , K.Balakrishnan Nair , K.M.Latha J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint is filed under Section 12 of the Consumer Protection Act claiming a total compensation of Rs. 2,10,000/-.

2. BRIEFLY stated, the allegations in the complaint are as follows: The complainant is running a Small Scale Industrial Unit in his residential building at Chombala in Azhiyoor Panchayat. For the purpose of his business he had taken a loan from Central Bank of India, Chombala Branch in 1987. The complainant is carrying on business of garment making under the name and style of "M.C. Garments". It was insured with opposite party for an amount of Rs. 1,20,000/- and its insurance premium was paid through the Bank. On 27th December, 1991, night a fire occurred in the shop and burglary also took place. The complainant and his wife and children had gone to a temple to see the temple festival and the complainant's mother and mother-in-law were only in the house. At about 2.15 a.m. the mother-in-law came to the temple premises and local people tried to extinguish the fire. It was noticed that tiles have been removed from the roof of the shop and burglary was committed. He sustained a loss of Rs. 1,20,000/-. The Bank authorities had inspected the shop and it can be seen from their statement that 1,60,000/- was lost on 25.12.91. The matter was reported to Bank Officers and the police. The complainant was advised to prefer a claim and a claim was preferred before the opposite party. However the opposite party did not do anything to settle the claim and it is in those circumstances the complaint was filed. The opposite party filed a version admitting the Insurance but denying the occurrence. It was also submitted that complicated factual questions are involved

in the matter and such questions cannot be determined by this Commission. It was also pointed that evidence regarding rendition of accounts, vouchers, bills, photograph and Crime No. 246/1991 of the Edachery Police Station and the final report submitted before the Judicial First Class Magistrate's Court, Badagara, have also to be looked into and all these can be done only by a Civil Court. It was also averred that the claim of the complainant was thoroughly probed and the survey was conducted and a detailed investigation was made and the investigation revealed that the claim is frivolous. It was further submitted that the venue of the Unit was the residence of the complainant and the Unit was functioning from 1986 but the complainant chose to take a shop keeper's policy on 9.8.91. Various contentions were also raised suggesting the whole incident was stage-managed and the claim was not genuine.

We examined PW 1, the complainant, and also marked Exts. P1 to P 17. Another witness PW 2 who is stated to be a public worker was also examined. RW 1, the Surveyor and RW 2 who was deputed by the opposite party to investigate the matter were also examined. The Final Report prepared by the Edachery Police Station in Crime No. 246/91 has also been produced. In the Final Report it is stated that their investigation revealed that no such incident has taken place. The Surveyors RW 1 and RW 2 deputed by the opposite party to make an investigation also stated that after inspection and investigation they came to the conclusion that no such incident has taken place. On going through the materials placed before us we feel to get at the truth far more witnesses have to be examined and more materials have to be scrutinised which cannot be done by this Commission. There is great controversy between the parties as to the occurrence. While the complainant will hold that an incidence, of fire and burglary had taken place, it is the definite stand of the opposite party no such incident took place. The Final Report made by the police will only indicate that there is no such occurrence. In the circumstances of the case we feel that it would not be proper for us to take a final decision on the materials available before us. We do not want to prejudice to any particular parties. Suffice it to say that the materials available are not sufficient to come to a conclusion that a fire occurred. We feel that the better course in the circumstances of the case would be to relegate the parties to a Civil Court. We accordingly dismiss the complaint reserving the right of the complainant to approach the Civil Court. All the records produced by the parties will be returned. Complaint dismissed.