(2016) 09 NCDRC CK 0081

In the National Consumer Disputes Redressal Commission

Case No : 790 of 2008

MD. AHSAN — APPELLANT

Vs

NATIONAL INSURANCE COMPANY LIMITED AND OTHERS — RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Consumer Protection Act, 1986, Section 21(b) - Jurisdiction of the National Commission

Citation : 2016 4 CPR 212

Hon'ble Judges : B.C. Gupta

Advocate : Mohit K. Shah, Sunita, Yogesh Malhotra

Final Decision : Petition Dismissed

Judgement

1. This revision petition has been filed under section 21(b) of the Consumer Protection Act, 1986, against the impugned order dated 22.11.2007, passed by the Bihar State Consumer Disputes Redressal Commission, Patna (hereinafter referred to as "the State Commission") in First Appeal No. 162/2006, Branch Manager, National Insurance Co. Ltd. vs. Md. Ahsan, vide which, while partly accepting the appeal filed by the OP Insurance Company, the order dated 19.01.2006, passed by the District Consumer Disputes Redressal Forum, Munger in Consumer Complaint No. 11/2004, filed by the present petitioner, allowing the said complaint, was modified.

2. The facts of the case are that the petitioner/complainant is proprietor of a business concern, M/s. S. Electronics situated at Gulzar Pokhar, Munger and the said shop was insured under the shopkeeper insurance policy with the opposite party (OP) National Insurance Co. Ltd. for the period 31.07.2000 to 30.07.2001, for a sum of Rs. 8 lakhs on stocks of electric goods. The said shop is hypothecated to the Union Bank of India for a cash credit limit of Rs. 5 lakhs. It is stated that a fire broke out at the shop premises in the intervening night of 18 & 19.04.2001, as a result of which, the entire stocks of goods and articles placed in the shop alongwith furniture and fittings were completely destroyed. An

intimation of the incident was given to the local police on the very next day i.e. 19.04.2001 as per S.D. entry no. 456/2001. The Insurance Company was also informed about the incident under the receipt dated 19.04.2001. It is alleged that the fire broke out due to short electric circuit. The Insurance Company appointed a surveyor R. K. Dumrewala to conduct preliminary survey. The said surveyor visited the effected premises on 21.04.2001 and held inquiries on the spot and collected details about the incident. Ultimately, he submitted his report dated 11.12.2001 and assessed the loss as Rs. 2,50,000/-. However, the Insurance Company appointed a second surveyor H. L. Sah, Chartered Accountant for doing the survey and assess the loss. The said surveyor demanded cash book, ledger, income tax return, trading and profit and loss account and also the balance sheet from the insured. He submitted his report on 05.10.2001, stating that the liability of the Insurance Company on account of the loss to the complainant was Rs. 3,84,905/-. The complainant has alleged that the Insurance Company did not settle the claim despite contacting them time and again. Ultimately, the complainant received letter dated 27.11.2003 from the Union Bank of India, informing him that the claim had been settled by the Insurance Company for Rs. 2.5 lakhs. The complainant filed the consumer complaint in question, seeking directions to the OP Insurance Company to pay a sum of Rs. 7 lakhs to him for loss in stocks; compensation of Rs. 1 lakh for deficiency in service and Rs. 10,000/- as cost of litigation alongwtih interest @ 18% p.a. on the sum of Rs. 7 lakhs from the date of payment till realisation.

3. The complaint was resisted by the OP Insurance Company by filing a written statement before the District Forum, in which they stated that the complainant had failed to produce any documents showing the stocks of material. They denied that there was any stock worth Rs. 7 lakhs and hence, there was no deficiency on the part of the Insurance Company in handling the grant of claim.

4. The District Forum, after taking into account the averments made by the parties, passed order on 19.01.2006, according to which, they directed the OPs to pay a sum of Rs. 6,84,924/- on account of loss sustained due to fire with interest @ 14% per annum from the date of claim till payment. A compensation of Rs. 10,000/- for mental agony and a sum of Rs. 1,000/- as litigation cost was also awarded. Being aggrieved against the said order of the District Forum, the Insurance Company challenged the same by way of an appeal before the State Commission. Vide impugned order, the State Commission directed the Insurance Company to make payment of Rs. 2.5 lakhs with interest @ 9% per annum for two years w.e.f. 11.01.2001 to 21.11.2003 for the period of delay in settling the claim. Being aggrieved against the said order of the State Commission, the petitioner is before us by way of the present revision petition.

5. During hearing, the learned counsel for the petitioner has drawn attention to the copy of the report lodged with the police on 19.04.2001 by his nephew Md. Mintu s/o Sheradi regarding the incident. He also referred to the letter of intimation sent to the Insurance Company and the claim form submitted by him.

The learned counsel stated that as per the stocks statement duly inspected and verified by the Union Bank of India on 01.10.2000, the total value of stocks as on 30.09.2000 was Rs. 6,58,510/-. The learned counsel stated that as mentioned in the complaint itself, the surveyor, H.L. Sah had demanded the cash book, ledger, income tax return, trading and profit and loss account, balance sheet, copy of invoice, sales memo, stock statement etc. for the period 01.04.2000 to 18.04.2001 and the insured had submitted entire papers to the said H.L. Sah. An affidavit to this effect had also been filed before the District Forum by the complainant. The learned counsel stated that in view of these facts and the verification of stocks by the Bank, the claim should have been paid to the complainant. The assertion made by the Insurance Company in their written statement that the complainant failed to produce any documents before the surveyor was not correct. On the other hand, neither the Bank nor the Insurance Company had filed any evidence to prove the contrary. The learned counsel further stated that the surveyor, in the report, had taken note of the stock statement verified by the Bank. The learned counsel further argued that the order passed by the District Forum reflected a true appreciation of the facts and circumstances on record and should be given effect to. The learned counsel also argued that the report given by the second surveyor H. L. Sah had been submitted on 05.10.2001, whereas that given by the first surveyor was received on 11.12.2001. The report received earlier should, therefore, be given a better weightage.

6. In the written submissions filed on behalf of the petitioner, the facts as pleaded above have been reproduced and emphasis has been laid on the authentication and verification of the stocks by the Bank. It has been prayed that the order passed by the District Forum should be upheld.

7. Per contra, the line of argument taken by the learned counsel for the OP Insurance Company says that the stocks as on the date of the incident should be taken into account, while computing the liability of the Insurance Company towards the complainant. During earlier period, there could be stocks having more value, but the position as on 18.07.2001 was to be kept in view, while deciding the case. The Insurance Company appointed surveyor R. K. Dumrewala, who visited the spot on 24.01.2001 and made his report on 11.12.2001, saying that payment of Rs. 2.5 lakhs should be made. The second surveyor H. L. Sah submitted his report earlier i.e. on 05.10.2001 and recommended payment of Rs. 3.84 lakhs. The said surveyor recommended that for non-production of the documents like cash book, ledger, sales tax and income tax return, a deduction of 25% should be made to the adjusted liability. The said surveyor had worked out the adjusted liability on the basis of the purchases for the period 01.04.2000 to 31.03.2001. However, the learned counsel has drawn attention to the reports made by both the surveyors in which they stated that the relevant documents or books of accounts etc. were not produced by the complainant before the surveyors. The learned counsel stated that the value of the stock as on the date of fire had not been provided by the complainant.

8. In response, the learned counsel for the petitioner stated that as confirmed by the Bank, the value of stock as on 31.03.2001 was Rs. 6,85,305/- and that the fire had taken place just a few days after the said authentication of stocks. He further stated that the complainant had filed his affidavit narrating the facts before the District Forum, in which it was mentioned that the relevant documents had been provided to the surveyor. The other party had not cross-examined the complainant on the version given. The learned counsel stated that the District Forum had carried out the calculations of loss based on the previous four stock statements.

9. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

10. An interesting feature in the present case is that the OP Insurance Company deputed a surveyor R. K. Dumrewala to make on the spot inquiry and assessment of loss, but before the said surveyor could submit his report, another surveyor H.L. Sah was deputed to assess the loss. It is not understood as to how the two surveyors appointed by the Insurance Company were functioning simultaneously for the purpose of assessing the loss. As per the usual practice, an Insurance Company appoints a surveyor to carry out on the spot survey, after the incident, and upon receipt of his report, a regular surveyor is appointed to carry out the detailed assessment of loss. In the present case, the surveyor appointed for on the spot survey, submitted his report in December, 2011, whereas the surveyor appointed later H. L. Sah submitted his report in October, 2011. As per the report of R. K. Dumrewala, surveyor, he calculated the average sale per day, based on the monthly value of the correct summation as per the insured bank account. He worked out the average sale per day as Rs. 7,400/- and multiplied it by the stock holding period of 45 days. From the amount so worked out, a deduction of 25% was made for contingency in the absence of books of accounts and the final amount was worked out as Rs. 2,49,750/-. On the other hand, H. L. Sah, surveyor worked out the average value of the stock as Rs. 5,13,207.00/- and after making deduction of 25% of the amount for non submission of documents, he worked out the adjusted liability at Rs. 3,84,905.00/-. A common feature of the reports made out by the two surveyors that both of them had stated that the insured could not produce the necessary documents before them. H. L. Sah surveyor stated that the insured could not produce cash book, ledger, copies of sales tax and income tax returns and he worked out the loss on the basis of stock statement. R. K. Dumrewala surveyor observed as follows:- "The copies of the "Quarterly Declaration Regarding Value of Stock" as furnished by the bank are completely untrue, unrealistic and baseless as during our visit on 21.04.2001, both the insured and the banker had clearly stated that no stock statements were submitted by the insured to the bank."

The surveyor R. K. Dumrewala further stated as follows:-

"The basis of the value of stock-inventory as stated in the subject quarterly declaration could not be examined by us as the insured had not produced any books of accounts on the plea that he had not been maintaining any books of accounts. Hence the figures as stated in the said declaration are totally baseless and untrue."

11. On the other hand, the petitioner/complainant stated in the affidavit filed by him that he submitted balance sheet, copy of invoice, sale memo and stock statement for the period from 01.4.2000 to 10.04.2001. In the affidavit made by the Adarsh Kumar Pandey, Branch Manager, National Insurance Company, it has been stated that the complainant failed to produce any document showing stock or material.

12. From the facts stated above, it becomes very clear that crucial documents like books of accounts, cash book, ledger book, tax statement etc. had not been submitted by the petitioner, in the absence of which an adverse inference has to be drawn against him.

13. On a comparison of the reports made by two surveyors, it is made out that R. K. Dumrewala, surveyor has carried out a detailed analysis of the facts and circumstances on record and recommended claim by working out the average sale per day based on the monthly value of the credit summation as per the insured claim account. It is made out that the amount of Rs. 2.5 lakhs as recommended by the said surveyor has more rational basis and the State Commission rightly directed the Insurance Company to make payment of Rs. 2.5 lakhs with interest @ 9% p.a. I, therefore, find that there is no illegality, irregularity or jurisdictional error in the impugned order, passed by the State Commission, which may merit interference in the exercise of revisional jurisdiction. The revision petition is, therefore, ordered to be dismissed and the order passed by the State Commission upheld.

