(1995) 03 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

M.GANDHI APPELLANT

Vs

United India Insurance Company Ltd. RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Citation : 1995 3 CPJ 25 : 1996 2 CPR 120

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

Final Decision : Complaint allowed

Judgement

1. THE first complainant is a Doctor by profession and second complainant is his wife. THEy constructed a Nursing Home at Uyyuru with 20 beds and operation theatre. THEy insured the building for a sum of Rs. 3,10,000/- and furniture and fittings for Rs. 30,000/-, in all a sum of Rs. 3,60,000/- with the United India Insurance Company i.e., the opposite party under an Insurance Policy covering the risk of cyclone between 8.12.1989 to 7.12.1990. While so due to un-precedented severe cyclone that occurred on 9.5.1990 the building and the equipment and furniture insured was badly effected. THE complainant got the loss estimated immediately by a qualified Engineer and Architect and licenced Surveyor V. Srinivasa Rao. THE Insurance Company appointed S. Raghunathan, Surveyor of Madras in May, 1990 itself to inspect the building and assess the loss. But the said Raghunathan did not visit the premises of the complainant and when the complainant and V. Srinivasa Rao Engineer went to Madras as requested by Raghunathan, he orally discussed the matter and arbitrarily reduced the amount on various items assessed by Srinivasa Rao without any basis. THE Insurance Company subsequently basing on the report or said to have been submitted by Raghunathan and applying the condition of under insurance offered a sum of Rs. 36,828/-. THE complainants did not accept the same, as the amount was arrived at arbitrarily without proper estimate of loss. Hence the complaint was filed claiming a sum of Rs. 2,50,000/- towards loss of the building, for fixtures and furniture, Rs. 48,000/- towards compensation, in all a sum of Rs. 3,00,000/-.

2. THE opposite party filed a counter denying the claim of the complainant and stating that on receiving information, immediately the opposite party appointed a Surveyor S. Raghunathan of Madras who submitted his report on 27.9.1990 with subsequent amendment on 16.10.1990. THE Insurance Company offered the amount of Rs. 36,828 /- as determined by the Surveyor. But the complainant did not voucher duly signed and that therefore there is no delay or negligence on the part of the opposite party in settling the claim of the complainant. It was further stated that the survey conducted by V. Srinivasa Rao cannot be relied upon since he had not taken into consideration the various aspects such as depreciation, under insurance etc. A reply to the counter affidavit was filed stating that S. Raghunathan did not come to the spot and did not verify the loss and also did not examine the correctness of the report submitted by V. Srinivasa Rao. On the other hand one Mr. Ganesh said to be the representative of Surveyor Raghunathan came to Vuyyur and took away the estimate prepared by V. Srinivasa Rao and asked the complainant to send M.R.O. certificate, photographs and plan of the building and promised that Raghunathan will visit the Nursing Home personally for assessment. But subsequently Raghunathan never visited the Nursing Home and therefore has no personal knowledge about the loss and hence the opposite party was in error in relying on the alleged report of Raghunathan prepared without inspecting the spot and hence reliance should be placed on the report of V. Srinivasa Rao.

During the pendency of the C.D an interim order was passed by the State Commission on 22.2.1992 whereby it directed the opposite party to pay to the complainant a sum of Rs. 36,828/- within four weeks from that date pending the C.D. and the complainant shall receive the same without prejudice to the contentions in the complaint.

3. ON behalf of the complainant Exs. A-l to A-18 were marked. The affidavits of Srinivasa Rao, Surveyor, A. Venkateswara Rao the person who was present when Ganesh visited the Nursing Home and the affidavit of first complainant were filed. ON behalf of the opposite party Exs. B-l to B-3 were filed. The only question that arises for consideration is whether Sri Raghunathan inspected the Nursing Home and estimated the loss and whether his report can be relied upon.

4. EX. B1 dated 27.9.1990 is the report submitted by Raghunathan. EX. B2 is dated 16.10.1990 is a correction issued to the mistake that crept in the Surveyor report EX. B-l. EX. B-3 is the letter written by Raghunathan to the Divisional Manager of the opposite party on 28.10.1993 i.e., subsequent to the filing of the complaint. This was in reply to the clarification sought by the Insurance Company in their letter dated 19.10.1993. In this letter EX. B3 it was not mentioned by Raghunathan that he inspected the Nursing Home and estimated the loss basing on his observations at the time of inspection. He also did not state that he scrutinised the bills and other documents produced by the complainant. In this letter it was stated that a preliminary report dated 20.6.90 was issued after discussing the same with Mr. Ganeshan, the technical assistant working with Mr.

Raghunathan and Associates. It was clearly stated that a preliminary survey was conducted by Mr. Arunkumar Surveyor from Vijayawada and that Raghunathan merely relied on the said report of Mr. Arunkumar with regard to cause of loss and submitted his (Raghunathan) report. The said report of the preliminary survey said to have been conducted by Sri Arunkumar was not placed before us. It was also not mentioned in the counter filed by the opposite party that one Arunkumar surveyed and submitted a preliminary report. For the first time Arunkumar name was mentioned in the EX. B3 letter. Hence a reading of EX. B-3 shows that S. Raghunathan did not visit the Nursing Home and his report is merely based on some preliminary survey report said to have been made by one Mr. Arunkumar. The said preliminary report was not produced before us and the opposite party did not make mention of any such report in the counter. On the other hand the complainant in his affidavit clearly stated that one Ganesan came and he merely took away the report of the Surveyor Sri Srinivasa Rao and asked the complainant to send papers like certificate of M.R.O, photographs and plan of the building. The complainant did send the papers. In support of this allegation in the complaint, the affidavit of V. Srinivasa Rao Surveyor was filed who stated that when the complainant and he visited Raghunathan at Madras at the instance of Raghunathan himself, he has not discussed about the loss of assessment, but he wanted "to make bargain in loss of assessment on my i.e., Srinivasa Rao" report and that Raghunathan did not visit the Nursing Home of the complainants. In the affidavit of A Venkates -wara Rao it was stated that one Mr. Ganesan visited the Nursing Home on 20.6.1990, but without seeing anything simply he had taken me report of V. Srinivasa Rao from Dr. Gandhi and said Mr. Raghunathan will visit separately. But Raghunathan did not visit the Nursing Home thereafter. Since there is no whisper of any preliminary survey report submitted by Mr. Arun kumar which is said to be the basis for Raghunathan to submit his report, we are satisfied that no reliance can be placed on the report of EX. Bl submitted by S. Raghunathan. The other documents EXs. A-1 to A-12 are the letters exchanged between the complainant and the opposite parties. EX. A-13 is the certificate issued by M.R.O. showing that the Nursing Home suffered damage due to cyclone on 9.5.1990. In EX. A-14 the complainant claimed Rs. 5,000/- towards the loss of furniture and in EX. A-15 he claimed Rs. 24,000/- towards loss caused to the equipment in the operation theatre. EX. A-16 is the report of V. Srinivasa Rao who assessed the loss to the building at Rs. 2,23,690/- and Rs. 24,000/- towards loss caused to the equipment in operation theatre, and Rs. 5,000/- towards furniture. EX.A-18 are the bunch of bills produced by the complainant showing the expenditure incurred by him towards the building, equipment, furniture etc. As we held that no reliance could be placed on Ex B1, the only survey report by a qualified Surveyor is Ex. A-16 submitted by Srinivasa Rao. But the learned Counsel for the opposite party Sri Hanumaiah firstly submitted that in the report submitted by V. Srinivasa Rao he has included certain items which are not covered by the policy. Secondly he has not deducted any depreciation and thirdly towards under insurance. With regard to first objection, it is submitted by the learned Counsel, that the Insurance Policy Ex.

A-17 does not cover the compound wall, flooring, back sheds, monoblock pumpset and Refrigerator. So far as the compound wall is concerned, the policy Ex. A-17 does not cover the same. It reads the super structure of me building of class-A construction and or on furniture, fixtures and fittings and or operation theatre equipment kept and/or lying therein belonging to the insured and under lien to the bank, was covered by the policy. Since the compound wall cannot be said to be part of super structure of the building, we are inclined to accept the submission of the learned Counsel, that the policy does not cover the compound wall. So far as the objection relating to flooring is concerned, we are satisfied that it is not the part of the super structure covered by the policy. So far as pumpset and refrigerator are concerned, they are not specifically covered by the policy and have to be excluded. In Ex. A-16 the Surveyor included these items also and assessed the loss at Rs. 2,23,690/-. The value of the compound wall is mentioned as Rs. 21,000/-, flooring Rs. 22,920/-, backsheds Rs. 18,000/-, pumpset Rs. 4,000/- and refrigerator Rs. 10,000/-. In all it comes to Rs. 75,920/-. These items have to be excluded from Rs. 2,23,690/- and the loss to the building comes to Rs. 1,57,770/-. Since it was constructed in the year 1980, depreciation at 12% is reasonable. Deducting the said amount of Rs. 12% from Rs. 1,57,770/-, i.e., Rs. 18,932/-, the loss to the building comes to Rs. 1,38,838/-. In the survey report Ex.B-1, it was stated that the market value of the building was Rs. 3,77,804/-, while as it was insured for a sum of Rs. 3,10,000/- and that therefore there is under valuation. Since we are not inclined to agree with the report of the Surveyor as he did not inspect the hospital for assessing the damage or market value at any time, we consider that no amount need be deducted towards under valuation. So far as the loss to the equipment in operation theatre and furniture is concerned, the Surveyor estimated their value as Rs. 24,000/- and Rs. 5000/- i.e., in all a sum of Rs. 29,000/-. Since all these items were purchased some time in 1980 or 1981 as 10 years period had elapsed, we consider a deduction of 25 towards depreciation will be equitable and just. The net loss towards the furniture and etc., will come to Rs. 21,750/-. Adding the aforesaid amount of Rs. 1,38,838 /- the net loss suffered by the complainants will come to Rs. 1,60,588/- i.e., about Rs. 1,60,000/-. We therefore hold that the complainant suffered the net loss of Rs. 1,60,000/- both towards the value of the building and equipment in the operation theatre and furniture and out of the said amount, the opposite party paid a sum of Rs. 36,828/- to the complainant. Deducting the aforesaid sum of Rs. 36,828/- from Rs. 1,60,000/-, the complainants entitled for further payment of Rs. 1,23,760/- from the opposite parties. In the result, we direct the opposite party to pay a further sum of Rs. 1,23,760/- with interest at 12 per cent p.a. from 1.3.1992 till the date of payment. There shall be no order as to costs. Complaint allowed.

