(1990) 12 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

MOHAN LAL And SONS APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 05-12-1990

Acts Referred:

Citation : 1991 1 CPJ 556

Hon'ble Judges : G.G.Loney , M.G.Gavai , Elipe Dharma Rao J.

Final Decision : Complaint partly allowed

Judgement

1. THE present complaint is filed by the complainant against the opposite party-Insurance Company-for rejecting the part claim of the insurance arising out of the fire causing damage to his shop. THE short facts are that the complainant has a retail cloth shop under the trading name "M/s. Mohanlal & Sons". It is the case of the complainant that they have insured the aforesaid shop under two policies. One is a shopkeepers insurance policy for a period from 17.1.1989 to 16.1.1990 for Rs. 3 lakhs. Another policy is fire policy "A" during the period from 9.9.1988 to 8.9.1989 for the amount of Rs. 3 lakhs. Both the policies covered the insurance of stock in trade, furniture, cloth, dress material etc. A fire occurred on 21.4.1989 at 1.30 a.m. and the shop was gutted. THE damage caused due to the fire was surveyed by Shri Bhatawadekar & Co. and survey report dated 26.6.1989 was submitted for grant of the claim. In the survey report, the damage to the stocks, furniture, sign board, was valued at Rs. 5,33,718. By making some additions in the survey report, the total claim of the complainant was worked out at Rs. 5,60,893/-. However, the Insurance Company the Opposite Party paid to the complainant total amount of Rs. 4,53,603 on 29.11.1989. According to the complainant the Insurance Company valued their claim on the basis of Insurance of total amount of Rs. 5 lakhs as against the total insurance of Rs. 6 lakhs. According to the complainant, they claimed Rs. 5,84,277 towards the loss due to fire. It is further contended by the complainant that the surveyors valued the loss at Rs. 5,30,593/- According to the complainant, the Insurance Company has informed them that due to oversight the fire endorsement No. 161000/11/11/3/01230/89 dated 23.8.1989 was

wrongly typed as Rs. 3 lakhs instead of Rs. 2 lakhs. THE complainant, therefore, alleged that this was never informed earlier by the Insurance Company and therefore, there is a wrong rejection of his claim. THE complainant, therefore, claimed Rs. 1,22,850 alongwith interest at the rate of Rs. 18% p.a.

2. IN response to the notice from this State Commission under section. 13 of the Consumer Protection Act, the opposite party filed its written statement dated 28.9.1990. The opposite party disputed the claim of complainant that the insurance was for Rs. 3 lakhs, and wrongfully shown as Rs. 2 lakhs. According to the INsurance Company, the fire insurance policies are accepted vide Code No. 98 at the rate of Rs. 3.10 per thousand as premium. Thus, the premium in respect of the disputed policy was accepted by the complainant at Rs. 620/- only. IN short, according to the insurance Company, there is no wrong dismissal of the complainant''s claim in this case. The INsurance Company also raised legal contention that this Court has no jurisdiction to enquiry into this complaint. On the basis of the rival contentions raised by both the parties the following issues arise for our determination. (1) Whether in respect of the disputed policy, the insurance was for the amount of Rs. 3 lakhs or Rs. 2 lakhs? (2) Whether there is a wrong rejection of complainant''s claim? (3) Whether the complainant is entitled to for the claim of Rs. 1,22,550/-?

We have heard the complainant in person and Shri M.M. Maheshwari for the INsurance Company. Section 64(VB) of the INsurance Act, 1938 reads as under:- No risk to be assume unless premium is received in advance - (1) No insurer shall assumed any risk in INdia in respect of any insurance business on which premium is not ordinarily payable outside INdia unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed for unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner. (2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer."

The plain reading of the aforesaid section shows that the contract of insurance is complete when the appropriate premium is paid by the insurer to the INsurance Company. According to Shri Maheshwari, code No. 98 provides the payment of Rs. 3.10 ps. per thousand for an insurance policy to cover the risks of fire The premium for the policy of Rs. 2 lakhs as per the rate of Rs. 3.10 ps. per thousand works out to Rs. 620/-. Thus, according to Shri Maheshwari the payment of premium of Rs. 620/- shows that policy was for the amount of Rs. 2 lakhs only. However, he admitted that the cover note was issued in favour of complainant treating the policy for Rs. 3 lakhs. But there was mistake while typing the amount of insurance on the policy. INstead of Rs. 2 lakhs, 3 lakhs were typed. Under these circumstances, according to Shri Maheshwari, the INsurance Company has correctly worked out the claim of complainant on the basis of the policy value of Rs. 2 lakhs. We find that there is substance in the contention of Shri Maheshwari. The legal requirement shows that the contract of policy is complete on payment of the required amount of premium. IN view of the fact that Rs. 620/- were paid by the complainant towards his policy, the insurance amount must be Rs. 2 lakhs, and not Rs. 3 lakhs. Thus, in our view the representation of the claim of the complainant on the assumption of the value of Rs. 3 lakhs is not correct. No fault can be found in the working of the INsurance Company when apparently it was a typing mistake. The complainant however, tried to show that his policy for the previous year was also for the amount of Rs. 3 lakhs and that he maintained it to obtain the insurance for Rs. 3 lakhs on the basis of the stock position and other connected matters. However, in view of the payment made by the complainant at the rate of Rs. 620/- towards the policy in question, we hold that the policy was for Rs. 2 lakhs and that he cannot take the advantage of the typing mistake committed by the INsurance Company. We, therefore, see no reason to grant the claim of complainant for Rs. 1,22,550/-. During the course of arguments it was stated by Shri Maheshwari on behalf of Insurance Company that Rs. 45,360/- were deducted at the rate of Rs. 10% on account of the finding of gas cylinder on the shop premises of the complainant which was the breach of condition of insurance policy. Shri Maheshwari submitted that the shop premises in question were found to be under renovation and for that purpose, the welding machine was found lying at the shop premises. However, Shri Maheshwari was unable to show to us the relevant provision for deduction of 10% rate described for such a contingency. Moreover, Shri Maheshwari is unable to convince us that apart from the welding machine gas cylinder was lying on the spot. On perusal of the survey report shown on page 5 under the Head "Fire Brigade Report in Items 4 that near the wall was a welding machine kept by the workers. There is no mention of any gas cylinder lying there. Under these circumstances, we find that there is no rational behind the action of the Insurance Company to deduct 10% from the payment to be made 10 the insurer for his firs claim. Consequently, the deduction of Rs. 45,360/- on that ground is not correct. We hold that it is a wrongful deduction made from the claim of the complainant without any basis for such deduction. We have, therefore, to hold that the complainant is entitled to get Rs. 45,360/- on account of wrongful deduction of that amount from his claim.

We do not find any other submission worth consideration as regards the grounds of maintainability. It has been repeatedly held by the National Commission that an insured is entitled to make a claim for any deficiency in the service of the Insurance Company while granting the claim of a insurer. We find in this case that the complainant is a consumer in respect of the services rendered by Insurance Company and also is legally entitled to receive his claim on account of the loss caused due to fire. The Insurance Company has indemnified the loss of complainant in the event of a fire. The occurrence of the fire is not in dispute and so also, the deduction of the amount of 45,360/- from the total claim of the complainant. We, therefore, hold that the complainant is not able to prove the allegation in respect of the wrong deduction of amount of Rs. 1,22,550/- from his total claim. The Insurance Company on their own have admitted before us that they have deducted Rs. 45,360/- on the ground of breach of condition of the policy from the total claim admissible and payable to the complainant. Hence we pass the following order. The United Insurance Company Ltd. having its registered Office at 24, Whites Road, Madras - 600014 do pay Rs. 45,360/- to the complainant through their Regional Office Kubera Chambers, Shivaji Nagar, Pune-411005 within a period of two months from the date of this order to the complainant together with interest at 9% p.a. from 21.4.1989 till the date of actual payment. Complaint partly allowed.

