(2015) 07 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

Case No : 79 of 2003

M.P. State Minor Forest Produce Trading And Development Co -Op. Fed. Ltd. — APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. — RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Citation : (2015) 07 NCDRC CK 0051

Hon'ble Judges : AJIT BHARIHOKE J.

Judgement

1. THE complainant is a co -operative society registered under M.P. Co -operative Societies Act, 1960. The complainant is engaged in the business of trading of various products on behalf of the State government which includes the storing/ godowning of Tendu Patta plucking and collecting from the forest of M.P.

2. THE complainant in order to secure the risk of loss to Tendu Patta stored in various godowns in M.P., obtained an insurance policy including fire policy for a sum of Rs. 90.13 crores. The policy was effective from 24.5.2000 to 23.5.2001. The said policy covered the stock of Tendu Patta packets in Gunny bags, loose packets, empty Gunny bags and all such other goods pertaining to the trade of the complainant or holding in trust or commissioned stored or lying in the building of first class construction. The Tendu Patta stored in District Union Dindori Godown. On 31.8.2000 at about 10.30 a fire took place in the godown of the complainant at Dindori resulting in destruction of Tendu Patta worth Rs. 96,37,214/ -. The matter was reported to the police and the FIR was registered. The opposite party was also informed and claim of Rs. 96,37,214/ - was filed. The opposite party, however, failed to settle the claim despite of several letters written in this regard. Being aggrieved of the failure of the opposite party to settle the claim, the complainant raised a consumer dispute seeking direction to the opposite party to pay to the complainant a sum of Rs. 96,37,214/ - as compensation on account of loss caused due to fire including fire brigade charges and salvage expenses with 20% interest thereon till the realization of the claim

amount.

3. OPPOSITE party, in the written statement has admitted the insurance cover extended to the complainant for the period 24.5.2000 to 23.5.2001. The opposite party also admitted that Tendu Patta stored in District Union Dindori Godown was covered under said insurance policy. Even the fire accident resulting in loss to Tendu Patta has not been denied.

4. ACCORDING to the opposite party immediately on receipt of information the opposite party appointed Shri Amit Rupan as Surveyor who submitted his detailed survey report dated 29.6.2001 wherein he assessed the net loss caused to the complainant due to fire at Rs. 44,13,000/ -. The opposite party alleged that after receiving the survey report the claim of the complainant was processed and he was asked to give various details and clarifications and the complainant took enormous time to furnish the details/clarification. The complainant, however, refused to give any response to many of the requirements asked by the Surveyor. The Surveyor thus despite of great handicaps submitted an addendum report on 23 December, 2002 on the basis of which the claim of the complainant was settled for a sum of Rs. 43,94,000/ -. The opposite party insurance company vide letter dated 1.5.2003 forwarded a cheque drawn on Bank of India for Rs. 43,94,000/ - to the complainant towards full and final settlement of the claim. It is alleged that the complainant accepted that amount purportedly under protest. According to the opposite party the acceptance of the cheque which was tendered in full and final settlement amounts to satisfaction of the claim of the complainant. It is alleged that as the amount has been paid in full and final settlement of the claim, the present complaint is not maintainable. The parties have filed the affidavits of Shri P.S. Tiwari, Manager (Internal Audit) of the complainant society and Shri Sarish Sharma, Deputy Manager of the opposite party insurance company in support of their respective stands taken in the pleadings.

5. WE have heard learned counsel for the parties and perused the record. There is no dispute between the parties that Khanuja Godown of the complainant society at Dindori was insured with the opposite party. It is also not disputed that on 31.8.2000. Fire accident took place at the said godown resulting in loss of Tendu Patta stock in the said godown. According to the complainant loss suffered due to the fire is to the extent of Rs. 96,37,214/ - whereas against that the opposite party has tendered and paid a sum of Rs. 43,94,000/ - which was accepted under protest. Stand of the opposite party is that the sum of Rs. 43,94,000/ - was paid to the complainant on the basis of survey report of Shri Amit Rupan, Surveyor and Loss Assessor and as such opposite party cannot be said to have committed deficiency in service.

6. LEARNED Shri Ashok Kumar Singh, Advocate for the complainant has taken us through the survey report (Annexure R -1) and contended that the report is arbitrary. Expanding of the argument, it is argued that at page 10 of the report the Surveyor has accepted the cost of per standard bag stored in godown as Rs.

665/ - against Rs. 675/ - claimed by the complainant but while computing the loss the Surveyor has illegally fixed the cost of Tendu Patta at Rs. 500 per standard bag. Learned counsel has further contended that although at page 12 of Annexure R -1 the Surveyor has assessed the loss of the Tendu Patta stored at the subject godown as Rs. 95,08,272/ - but without any justification has illegally reduced the amount of loss caused for making payment under the insurance policy to Rs. 44,13,000/ -. It is further argued that despite of concluding that the insurance policy taken by the insured was inadequate to the tune of 32.22% and reduced the amount by Rs. 21,02,806/ -. Learned counsel has thus urged that the report of Surveyor is not reliable and as such pressed for his claim of Rs. 96,37,214/ - with interest. Learned counsel for the opposite party on the contrary has supported the report of Surveyor.

7. IN order to consider the rival contention, it would be useful to have a look on the report of Surveyor (Ext. R -1). Clause E of the report deals with the valuation of stock stored at fire affected godown at Dindori which reads as under: - "The insurance has been taken on the basis of Procurement cost of Tendu Leaves. For indemnity purpose, the undersigned has worked out the procurement cost of Tendu leaves stored at Khanooja godown at Dindori as per under noted details: -

8. ON reading of the above, it is clear that while assessing the procurement cost the Surveyor has taken note of payment to the plucker besides processing cost, transportation, godowning, watchman charges, administrative expenses and miscellaneous expenses etc. The Surveyor has even taken into account proportionate storage charges for the storage involved for Dindori godown as also administrative expenses of head office of the society for storage of Tendu leaves of an average of 12 months as per head office record. The complainant in his affidavit evidence has not challenged the figures detailed in the above -noted valuation clause of the report. Therefore, we find no reason to differ from the valuation assessed by the assessor @ Rs. 500/ - per standard bag. The second challenge to the Surveyor report is that the Surveyor has arbitrarily assessed the extent of under insurance to the tune 32.22%. In this regard also the Surveyor has taken into account the summary of the stock stored to calculate value at risk and sum insured available for the relevant godown. Relevant portion of the report dealing with the extent of net insurance is reproduced as under: -

9. WE do not find fault with the aforesaid calculation done by the Surveyor particularly when no evidence has been led by the complainant to controvert the above -noted figures pertaining to summary of the stock stored for assessing the value of stock at risk and the sum insured available. Thus, on this count also the report of Surveyor cannot be faulted.

10. LASTLY , it is contended on behalf of the complainant that despite of assessing the cost of Tendu leave stored at the godown at Rs. 95,08,272/ - the Surveyor arbitrarily reduced the amount payable under the insurance policy to Rs. 44,13,000/ - (round figure) which reduction is not justified. There is no merit in this contention. On careful perusal of the Surveyors report we find that at

page 12 of the report (Annexure R -1) the Surveyor has calculated the cost of Tendu leaves stored at the godown at Rs. 95,08,272/ - and this figure does not connote the actual loss caused due to fire assessment of actual loss caused due to fire is dealt with in the part of the report dealing with statement of loss which has been prepared on the basis of the relevant record and amounts to Rs. 62,93,351/ - inclusive of the salvage value. The Surveyor has added a sum of Rs. 2,33,050/ - in the said amount for total cost of firefighting operation and assessed the gross loss caused to the tune of Rs. 65,26,401/ -. The assessor has then reduced the amount by 32.22% because of under insurance and calculated the net loss suffered by the complainant at Rs. 44,13,595/ -. We do not find any infirmity in the approach adopted by the Surveyor to calculate the loss particularly when complainant has led no evidence to controvert the figures detailed in the Survey report. Admittedly, sum of Rs. 44,13,000/ - has already been paid to the complainant. Therefore, we find no deficiency in service on the part of the opposite party. In view of the discussion above, complainant has failed to show any deficiency in service on the part of the opposite party. Complaint is, therefore, dismissed.