(2016) 08 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

Case No : 284 of 2016

M/S. HINDUSTAN COTTON INDUSTRIES APPELLANT

Vs

ORIENTAL INSURANCE COMPANY LTD. & ORS. RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Citation : 2016 3 CPR 623

Hon'ble Judges : Ajit Bharihoke, S.M. Kantikar

Advocate : D. Bharat Kumar

Final Decision : Appeal Dismissed

Judgement

1. The present first appeal has been filed by the appellant/complainant challenging the impugned order dated 2.12.2015 passed in C. C. No. 44 of 2013 by A. P. State Consumer Disputes Redressal Commission, Hyderabad whereby the State Commission dismissed the complaint of the complainant.

2. The brief facts relating to disposal of this appeal are that, the complainant/ Hindustan Cotton Industries is a registered firm, which carries the business of cotton storage. The complainant took six insurance policies from opposite party No. 1- Oriental Insurance Company Ltd. viz. three policies for an assured sum of Rs. 2 crores each, and three policies for an assured sum of Rs. 1 crore, Rs. 75 lakhs and Rs.25 lakhs respectively covering all varieties of cotton belonging to the complainant stored and/or lying in the factory premises for the period from 22.3.2010 to 21.6.2010. During the subsistence of the insurance policy, the storage of complainant was hit by ''Laila'' cyclone from 20.5.2010 to 22.05.2010, which caused severe damage to the various varieties of cotton stored in the premises of the complainant. Therefore, large number of raw cotton lints, cotton bales and cotton seeds were spoiled. The complainant submitted the claim claiming an amount of Rs.99 lakhs from opposite party towards the loss sustained before the OP/Insurance Company and produced the entire details alongwith sales tax record, agricultural market committee record, stock register and insurance policies.

3. On receipt of intimation of loss a surveyor was appointed. On the basis of report of Surveyor, OP allowed the claim of Rs.75,900/- and sent offer to the complainant as a full and final settlement of claim for Rs.75,900/-. The complainant protested against the offer as against its claim of Rs.1,06,08,000/- towards the damage to the stock in the cyclone. The total stock involved was 4315 quintals, which was worth of Rs.1,43,04,225/-, out of which 1115 quintals of cotton of worth Rs.36,96,225/- was retrieved by salvage operation and the remaining cotton was damaged.

4. Therefore, aggrieved by failure of the OP to settle the claim on the basis of actual loss suffered, the complainant filed a complaint before Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad. The State Commission dismissed the complaint.

5. We have heard Mr. D. Bharat Kumar, learned counsel for the appellant/ complainant at the time of admission stage.

6. There is delay of 62 days in filing this first appeal. We have perused the application for condonation of delay. It is stated that complainant undergone Cartoid By-pass surgery, Stent graft of Thoraco abdominal aortic aneurysm in the month of July, 2015 and he was under medical treatment till March, 2016. In this regard, appellant filed relevant treatment and medical record. Therefore, in the interest of justice, we hereby condone the delay. On the merit, counsel vehemently argued that the genuine claim was reduced by the OP. The surveyor did not properly assess the damage of the stock in the premises.

7. The short question involved in this appeal is ''whether the repudiation of claim of complainant made by the Oriental Insurance Company Limited/OP was correct?'' In this context, we have perused the surveyor''s report and the order of State Commission.

8. The Surveyor''s assessment report revealed the net extent of damage at 137.30 quintals. Accordingly, the Surveyor calculated/ assessed the loss as per following chart:- The Loss Assessment :-

The Loss Assessment :-

The damaged quantity of cotton kappas of 137.80 qtls. @ 3225/ qtl. 4,44,405-00

Less : Salvage @ 10%

44,440-00

3,99,965-00

Less : Policy Deductible 19,998-00

Net Loss recommended 3,79,967-00

APPORTIONMENT

1) M/s United India Insurance Co. Ltd.-20% 75,993-40

2) M/s Oriental Insurance Co. Ltd. - 80% 3,03,973-60

100% 3,79,967-00

9. Accordingly, the opposite party No. 1/Oriental Insurance Co. Ltd. settled the loss at Rs.3,03,973/- as its share, whereas the share of OP 3 is Rs.75,993/-

10. The State Commission categorically gave a finding that, the complainant failed in the duty to prove the damage. The State Commission observed that: ''except the pleadings and assertions in the letters, the complainant has not filed any material to prove the same. The complainant would seek to rely on the photographs marked as Ex. A29 which in the opinion of this Commission do not throw any light on the issue. All that the photographs would show is that there was some material in the open area and some material was affected. Beyond this, the photographs do not show the quantity of damage. The complainant has not brought anything on record to show that even said material was totally damaged or that said stock was not part of stock which was taken into account by the surveyors.''

11. As per available record, it is undisputed that all the policies were in force, the stock material was affected due to cyclone, except the dispute between the parties was about the quantum of loss in the cyclone. According to the complainant, loss due to cyclone was 3200 quintals of cotton whereas according to the OPs 1 and 2, the damage was only to the extent of 137.30 quintals of cotton. As per the averments of complainant, 4157.39 quintals was in the open area and the said stock was affected due to inundation. The complainant further stated that 1115 quintals was salvaged whereas 3200 quintals could not be salvaged due to total damage. The complainant has not filed any material to contradict the assessment of Surveyor. It is pertinent to note that the surveyor assessed the damage and found that the material was staked in net heights and only the bottom portion of the stock was affected due to stagnation of water.

12. In the catena of judgments from Hon''ble Supreme Court and this Commission, it is now well settled that the report of the surveyor will always have preponderance over the estimate made by the claimant unless cogent evidence is there to show that the report of Surveyor is incorrect. Reference be made to " D. N. Badoni Versus Oriental Insurance Co. Ltd. I (2012) CPJ 272 (NC)". The Supreme Court also took the same view in the authority reported in the case of " United India Insurance Co. Ltd. & Ors. Versus Roshan Lal Oil Mills Ltd. & Ors. (2000) 10 Supreme Court Cases 19". The complainant has failed to show any cogent evidence to prove that loss suffered by him is more than assessment made by the Surveyor. Therefore, we are not inclined to reject the Surveyor''s assessment in the instant case.

13. Therefore, on the basis of foregoing discussion, we do not find any need to interfere in the well reasoned order of the State Commission. Accordingly, the

appeal is hereby dismissed.

