(2014) 02 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

M/S. Lakshya Garments APPELLANT

Vs

NATIONAL INSURANCE COMPANY LIMITED RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 119

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : SALIL PAUL , NEERJA SACHDEVA

Judgement

1. PETITIONER /Complainant being aggrieved by order dated 07.06.2011 passed by State Consumer Disputes Redressal Commission, Haryana, Panchkula (for short, ''State Commission '') (in First Appeal No.2186 of 2006) has filed the present revision petition under Section 21(b) of the Consumer Protection Act, 1986(for short, ''Act '').

2. FACTS of this case are that petitioner got insured his garments shop with the Respondent/Opposite Party for Rs.5,00,000/ - for the period w.e.f.3.11.2003 to 2.11.2004. It is alleged that during the intervening night of 30/31.10.2004, some unknown person house -trespassed into the shop by breaking open the lock of the shop and stole garments worth Rs.3,50,000/ -.DDR No.9 dated 30.10.2004 was recorded at Police Post Kala Amb. On being informed, respondent deputed surveyor who investigated the matter and reported that it was a false claim. However, as per the stock statement collected from UCO Bank, the surveyor considered the claim equivalent to Rs.46,842/ - by all means and considered the same to be reasonable and justified value of stock held in the insured in the absence of proper books of account. The respondent closed the claim of the petitioner as ''No Claim '' for want of sufficient proof. Dissatisfied with action of the respondent, a consumer complaint was filed by the petitioner praying for the following reliefs; ''''(i)To pay Rs.3,50,000/ - on account of loss of goods by way of theft, which were insured with the respondent, along with interest @ 18% P.A. (ii)To pay compensation of Rs.50,000/ - on account of mental agony, harassment and other expenses etc. (iii) To pay Rs.2,500/ - on

account of cost of forced proceedings. ''''

3. DISTRICT Consumer Disputes Redressal Forum, Ambala(for short, ''District Forum '') vide order dated 18.10.2006, allowed the complaint by granting the following relief; ''''(i)pay Rs.3,50,000/ - towards the loss suffered by the complainant as a result of theft of his goods etc. along with interest @ 10% P.A. from the repudiation of the claim till realization. (ii)To pay Rs.500/ -as cost of proceeding ''''.

4. AGGRIEVED by the order of District Forum, respondent filed an appeal before the State Commission, which accepted the same and dismissed the complaint of the petitioner. Now, petitioner has filed this revision petition. In response to this petition, respondent has filed its counter affidavit.

5. WE have heard the learned counsel for the parties and gone through the record.

6. IT has been contended by learned counsel for the petitioner that State Commission has completely ignored the documents duly proved on record with regard to the stock statement furnished to the bank. Moreover, petitioner has furnished various bills in respect of purchases made by him and stock thereof which was lying in the shop at the time of incident. Moreover, the surveyor though had filed his report but he did not appear in the witness box, as such no reliance can be put on his report. In support, learned counsel for petitioner has relied upon the following judgments; (i) Banaras Breads Ltd.& Ors.Vs. New India Assurance Co. Ltd. and Ors.II(2005)CPJ 111 (NC) and (ii)New India Assurance Co.Ltd. Vs.Kohinoor Sizing Factory II(2006)CPJ 237(NC). On the other hand, it has been contended by learned counsel for the respondent that petitioner did not prove that he was an Income Tax payee. Moreover, petitioner did not maintain the account books with respect to the stock in the insured shop. All the photo copies of the bills submitted by the petitioner to the surveyor were referred to the concerned firms on the addresses given on those bills for confirmation, but same were returned with the reports that these firms were not in existence in the area. Thus, it stand established from the record that petitioner had produced bogus bills for getting false claim. In these circumstances, State Commission rightly rejected the claim of the petitioner.

7. CASE of petitioner is that goods were hypothecated with the UCO Bank and official of Bank have been making periodic visit to his shop for the purpose of inspection of the stock and the stock statement was being signed by Sh. Vijay Singh, Field Officer of UCO Bank. In this regard, petitioner has placed on record copies of the stock statements(Page No. 60 to 65 of the Paper -book).

8. AFTER perusal of these stock statements, we find that these have been signed by the Owner, i.e. Petitioner alone. There are no signatures on these statements of any official of the UCO Bank. The relevant stock statement is dated 30.09.2004. Even this stock statement does not bear signatures, either of Mr. Satpal Singh or that of Mr. Vijay Singh, Field Officer of the UCO Bank. These

statements nowhere state that the stocks were checked by the Field Officer on 30.09.2004. The best person to depose about inspection of the stocks of the petitioner ''s shop was Mr. Vijay Singh, Field Officer of the UCO Bank. No affidavit of said Field Officer has been filed nor was he examined as a witness by the petitioner before the District Forum. Under these circumstances, no reliance can be put on all unsigned stock statements. Be that as it may, the case of petitioner is that he had furnished copies of the bills with regard to the items purchased from various firms to the Surveyor. Interestingly, not even a single person from whom the alleged purchases were made by the petitioner, has been examined by the petitioner.

9. ON the other hand, as per survey report submitted by the Surveyor appointed by the respondent, the Surveyor had sent Registered letters to various persons from whom the petitioner has allegedly made purchases. However, all those letters were returned back with remarks of the Postal authorities namely ''''NO SUCH FIRM IN THE AREA. NO SUCH NO. IN PAN MANDI, RETURNED TO SENDER ETC. ''''.

10. HENCE , there is nothing on record to show that goods worth Rs.3,50,000/ - were ever stolen from the shop of the petitioner. State Commission in its impugned order observed as under; ''''The perusal of the report of surveyor produced on record support the version of the opposite party. It is established that the complainant was not an Income -tax payee and for that reason its claim could be settled in view of the record collected from UCO Bank from where the complainant had obtained loan for his shop. The complainant also did not maintain the account books with respect to the stock in the insured shop. The photo copies of the bills were submitted by the complainant to the Surveyor were referred to the concerned firms on the addresses given on those bills for confirmation but the same were returned with the reports that those firms were not in existence in the area. Thus, from the evidence available on record, it is proved that the complainant produced bogus bills for getting false claim. District Consumer Forum has failed to appreciate all these facts and committed error by holding the Insurance Company to pay compensation and as such the impugned order cannot be allowed to sustain. For the reasons recorded above, this appeal is accepted, the impugned order is set aside and the complaint is dismissed ''''.

11. UNDER section 21 (b) of the Act, this Commission can interfere with the order of the State Commission where such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

12. NONE of the judgments cited by learned counsel for the petitioner are applicable to the facts and circumstances of the present case. Thus, we do not find any reason to disagree with the findings given by the State Commission. Moreover, there is no infirmity or illegality in the impugned order passed by the State Commission. Hence, the present revision petition stands dismissed.

13. NO order as to cost.

