(2015) 01 NCDRC CK 0006

In the National Consumer Disputes Redressal Commission

Case No : NO 840 of 2013

M/S. MIKIKUKI INTERNATIONAL — APPELLANT

Vs

NEW INDIA ASSURANCE CO. LTD. — RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Constitution of India, Article 226, Article 226 - Power of High Courts to Issue certain writs - Power of High Courts to Issue certain writs

Citation : 2015 2 CPJ 69

Hon'ble Judges : J.M. Malik, S.M. Kantikar

Advocate : Davesh Vashishtha, Neerja Sachdeva

Judgement

1. Sh. Rajinikant Shantilal Gandh, the complainant, in this case, is the Proprietor of the firm M/s. Mikikuki International. It transacts the business of selling marble tiles. The complainant had stored his goods in ''Archana Kutir'', Ground Floor, Vile Parle (West), Mumbai. The petitioner/complainant had obtained an insurance policy from the New India Assurance Co. Ltd., the OP.

2. During the subsistence of the policy, in the first week of July, 2006, there were torrential rains. Rain and flood water entered the godown of the complainant. The rain and flood water soaked the marble tiles. The Surveyor visited the spot on 06.07.2006 and 11.07.2006.

3. The complainant claimed an amount of 7,32,646/- , but the Surveyor in his report allowed the claim in the sum of 4,34,107/- only. The insurance company awarded a sum of 1,98,652/-, after deducting a sum of 2,25,000/- towards salvage. The complainant declined the offer made by the insurance company to accept the sum of 1,98,652/-, in full and final settlement of the claim.

4. The insurance company, OP contested this case. Both the fora below have not allowed the complaint/appeal preferred by the complainant. They came to the conclusion that a sum of 1,98,652/- was enough which be paid, along with interest @ 9% p.a.

5. We have heard the counsel for the parties. Counsel for the OP argued that Sh.M.R. Shenvi, Chartered Engineer, gave his survey report on 28.07.2006 and gave the loss assessment report, as under :- "LOSS ASSESSMENT

Assessed Loss Rs.4,34,107.00

Less : Salvage Rs.1,50,000.00

(Refer enclosed Annexure ''B'')

Assessed Loss Rs.2,84,107.00

Less : Applicable excess @ 5% as per policy terms and conditions Rs. 14,205.35

Net Assessed loss amount Rs.2,69,902.00

Say Net Assessed Loss amount Rs.2,69,902.00

(Rupees Two lakhs sixty-nine thousand nine hundred & two only)". At the last page of the said report, it was further reiterated as under :

" In addition to these boxes, there were total 2726 sheets of size 30x30 cm with 50mmx50mm ceramic tiles known as "KERAMIK" pasted / glued to the sheet. Due to water stagnation, the glue-strength was reduced and small ceramic tiles of above size 50 mm x 50 mm which, were glued to the sheet, were separated from the sheet and are of no use for the required purpose. We tried to find out the best available salvage but nobody came forward for the purchase of these sheets. Considering this aspect, we recommend loss value of Rs.3,93,300/- less salvage value of Rs.1,50,000/-. Therefore, the assessed loss value is Rs. 4,34,107/-".

6. It appears that the OP was not satisfied with the said report and the same Surveyor visited the spot again made a second/ revised report, dated 18.05.2007, the relevant portion of which, runs as follows :- " Pursuant to instructions received from M/s. New India Assurance Co. Ltd., Mumbai, D.O., No. 131100, we, the undersigned surveyors and loss assessors, visited shop premises of M/s. Mikikuki International, situated in Archana Kutir, Ground Floor, N.S. Road No. 13, Opp. Lotus Eye Hospital, Next to Natural Ice-cream, Near Juhu Bus Depot, Vile Parle (West), on 06.07.2006 and on subsequent date in order to survey and assess the loss sustained to various types of ceramic tiles in the shop, due to flood. We now report as follows:".

7. In the second report, the salvage amount was increased from 1,50,000/- to 2,25,000/-. The total loss was stated to be 2,09,107/- and after deducting 5%, as per policy terms and conditions, the net loss was assessed at 1,98,651/-.

8. Counsel for the OP argued that the complainant has made namby pamby pleadings. It does not have one set of attack. Sometimes it states that it had suffered loss in the sum of 15,00,000/- while sometimes it states that it had suffered loss in the sum of 9,30,000/-. Again, it made a claim in the sum of 7,32,646/- and now the complainant counsel admits that he would be satisfied if

an amount of 4,34,107/- is given to the complainant. He contended that reliance should be placed on the second survey report and the orders passed by the fora below should be confirmed.

9. Her argument that the surveyor''s second report should be accepted, is bereft of merit. We see no reason to believe the same. It is well settled that the insurance company finds one way or the other to repudiate the claim made by the claimants/consumers. No reason was given, why the first report of the Surveyor was not being accepted. Unless and until both the parties can show to the Commission that the Surveyor has got an ulterior motive and passed his report on imaginary aspects, only then, his report can be dismissed. There is no allegation against the Surveyor from any of the parties. It appears that the Surveyor was compelled to file the second report in order to suit the OP. Due weightage has to be given to the report of the Surveyor. This view finds support from the following two authorities reported in United India Insurance Co. Ltd., & Ors. Vs. Roshan Lal Oil Mills Ltd. & Ors., (2000) 10 SCC 19 and D.N.Badoni Vs. Oriental Insurance Co.Ltd, 1 (2012) CPJ 272 (NC).

10. We, therefore, accept the first report of the Surveyor and deduct a sum of 1,50,000/- from the total loss assessed by the Surveyor. The complainant is entitled to a sum of 2,69,902/- as is apparent from the first report of the Surveyor. The orders passed by the fora below are modified to the extent that OP will pay a sum of 2,69,902/- to the complainant, along with interest @ 9% p.a., from the date of filing of the complaint (31.12.2008), till its realisation. The revision petition stands disposed of.

