(2017) 05 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

Case No : 333 of 2013

M/s MUTTHA ASSOCIATES APPELLANT

Vs

M/s UNITED INDIA INSURANCE CO. LTD. & ANR. RESPONDENT

Date of Decision : 01-05-2017

Acts Referred:

Insurance Regulatory and Development Authority (Protection of Policy Holders Interest) Regulation, 2002, Regulation 9

Citation : 2017 2 CPR 665

Hon'ble Judges : Ajit Bharihoke, Anup K Thakur

Advocate : A.K. Sharma, Ravi Bakshi

Judgement

1. M/s Muttha Associates the complainant herein had taken a standard fire and special peril policy from the opposite party No.1 insurance company. The policy was effective from 22.1.2010 to 21.1.2011 and the sum insured was Rs.47 crore 5 lakhs only.

2. Unfortunately, on 29.7.2010 at 4.10 hrs. the fire took place in the server room of M/s Muttha Chambers II, S.B. Road, Pune (the insured property) resulting in heavy loss. The matter was reported to the insurance company. The opposite party appointed M/s Crawford Puri and Associates. The surveyor after the survey submitted final report to the insurance company on

3. 5.2012. The surveyor assessed the loss suffered to the tune of Rs.13,82,93,292/-.

3. It is the case of the complainant that as per the Insurance Regulatory and Development Authority (Protection of Policy Holders Interest) Regulation, 2002 particularly Regulation 9, the opposite party insurance company was required to settle the claim or reject it within 30 days of the receipt of the final survey report from the surveyor. The opposite party, however, failed to settle the claim within the requisite period of 30 days nor the claim was rejected.

4. It is alleged that the opposite party ultimately settled the insurance claim of

the complainant amounting to Rs.13,82,93,292/- in two installments in the month of December, 2012. The first installment of Rs.5 crore was paid on account on 5.12.2012 and balance payment was made on 24.12.2012 which amounts were received by the complainant under protest. According to the complainant the delay in making the payment of the insurance claim is violation of the provisions of Insurance Regulatory and Development Authority (Protection of Policy Holders Interest) Regulation, 2002 (in short, the ''Regulation'') and amounts to deficiency in service. Hence, the complaint with following prayer: -

"1. The opposite party be directed to pay the interest amounting to Rs.1,11,98,938 on the delay of 204 days that they have made after receiving the final report from the surveyor in settling the claim of the complainant.

2. The opposite party be directed to pay Rs.74,408/- towards the expenditure incurred in travelling to the headquarter of the opposite party at Chennai.

3. The opposite party be directed to pay Rs.5,00000/- towards the harassment, mental agony that the complainant has suffered at the hands of opposite party from July 2010 to December 2012 without any fault of the complainant and the money that the complainant has spent on litigation.

4. Any other just and proper order."

5. The opposite party in its written statement has admitted having issued the insurance policy. It is admitted that insured premises was gutted in fire and that on receipt of intimation, M/s Crawford Puri & Associates were appointed as Surveyor. It is also admitted that surveyor submitted the report on 03.05.2012 and that payment of insurance claim were made in two instalments on 05.12.20112 and 24.12.2012. The opposite party, however, resisted the complaint on the ground that complaint is not maintainable because the amount of loss assessed by the surveyor was paid without delay in accordance with the provisions of Insurance Regulatory and Development Authority (Protection of Policy Holders Interest) Regulation, 2002. It is further submitted that the consumer complaint only for payment of interest on the principal amount already received by the complainant is not maintainable. It is further alleged in the written statement that after having received the full and final amount of settlement, the complainant is estopped from raising the consumer disputed. Parties have filed affidavits in support of their respective contentions.

6. We have heard learned counsel for the parties and perused the record.

7. Learned counsel for the complainant has contended that the delay in settling the claim and making the payment amounts to deficiency in service on the part of the opposite party. Expanding on the argument learned counsel has drawn our attention to Insurance Regulatory and Development Authority (Protection of Policy Holders Interest) Regulation, 2002, particularly Regulation 9 and submitted that as per the aforesaid regulation the opposite party was required to settle the claim or reject it within 30 days from the receipt of the final report

from the surveyor, which timeline has not been adhered to by the insurance company.

8. In order to appreciate the contention of learned counsel for the complainant, it would be useful to have a look on Regulation 9 of Insurance Regulatory and Development Authority (Protection of Policy holders'') Interests) Regulations 2002, which reads as under

"9. Claim procedure in respect of a general insurance policy

(1) An insured or the claimant shall give notice to the insurer of any loss arising under contract of insurance at the earliest or within such extended time as may be allowed by the insurer. On receipt of such a communication, a general insurer shall respond immediately and give clear indication to the insured on the procedures that he should follow. In cases where a surveyor has to be appointed for assessing a loss/ claim, it shall be so done within 72 hours of the receipt of intimation from the insured.

(2) Where the insured is unable to furnish all the particulars required by the surveyor or where the surveyor does not receive the full cooperation of the insured, the insurer or the surveyor as the case may be, shall inform in writing the insured about the delay that may result in the assessment of the claim. The surveyor shall be subjected to the code of conduct laid down by the Authority while assessing the loss, and shall communicate his findings to the insurer within 30 days of his appointment with a copy of the report being furnished to the insured, if he so desires. Where, in special circumstances of the case, either due to its special and complicated nature, the surveyor shall under intimation to the insured, seek an extension from the insurer for submission of his report. In no case shall a surveyor take more than six months from the date of his appointment to furnish his report.

(3) If an insurer, on the receipt of a survey report, finds that it is incomplete in any respect, he shall require the surveyor under intimation to the insured, to furnish an additional report on certain specific issues as may be required by the insurer. Such a request may be made by the insurer within 15 days of the receipt of the original survey report.

Provided that the facility of calling for an additional report by the insurer shall not be resorted to more than once in the case of a claim.

(4) The surveyor on receipt of this communication shall furnish an additional report within three weeks of the date of receipt of communication from the insurer.

(5) On receipt of the survey report or the additional survey report, as the case may be, an insurer shall within a period of 30 days offer a settlement of the claim to the insured. If the insurer, for any reasons to be recorded in writing and communicated to the insured, decides to reject a claim under the policy, it shall do so within a period of 30 days from the receipt of the survey report or the

additional survey report, as the case may be.

(6) Upon acceptance of an offer of settlement as stated in sub-regulation (5) by the insured, the payment of the amount due shall be made within 7 days from the date of acceptance of the offer by the insured. In the cases of delay in the payment, the insurer shall be liable to pay interest at a rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by it."

9. On reading of the above it would be seen that the insurer on receipt of the insurance claim is supposed to appoint a surveyor within 72 hrs. and the surveyor is required to submit his report within 30 days of his appointment unless in special circumstances of the case either due to its special and complicated nature he seeks extension for submission of report. However, in no case surveyor is entitled to take more than six months from the date of his appointment to furnish the report. Clause 5 of Insurance Regulatory and Development Authority (Protection of Policy Holders Interest) Regulation, 2002 quoted above provides that the insurer on the receipt of final report of the surveyor is required to settle the insurance claim within 30 days from the date of receipt. The payment to the insured has to be made within 7 days of the acceptance of offer of settlement. Clause 9 (6) of the above regulations provides that in case of delay in payment the insurer is liable to pay interest at the rate which is 2% above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by the insurer.

10. Admittedly the surveyor submitted their final survey report to the opposite party insurance company on 03.05.2012. Thus, as per requirement of clause 9 (5) of the Regulation, the insurance company was required to either accept or reject the report of surveyor and offer settlement to the insured within 30 days of the receipt of final survey report. The insurance company OP admittedly did not comply with the aforesaid requirement of clause 9 (5) of the Regulations and instead made payment of Rs.5.00 crore on account after considerable delay on 05.12.2012 and, thereafter, balance payment of Rs.8,82,38,963/- was paid vide payment voucher dated 24.12.2012. Thus, this is clear case of violation of clause 9 (5) of the Regulations and amounts to deficiency in service. Therefore, clause 9 (6) of the Regulations comes into play, which provides that in case of delayed payment, the insurer shall be liable to pay interest @ 2 % above the bank rate prevalent at the beginning of the financial year in which the claim is reviewed by the insurer.

11. Learned counsel for the opposite party has contended that instant consumer complaint is not maintainable for the reason that complainant admittedly has accepted the entire principal amount of compensation assessed by the surveyor. Therefore, he is estopped for raising the consumer dispute regarding the interest payable due to late payment.

12. We do not find merit in this contention. This is not a case in which

complainant has accepted the insurance amount without protest. Perusal of the copy of the settlement voucher signed by the complainant would show that amount was accepted by the complainant under protest and the complainant has subsequently endorsed on the settlement voucher that he reserves his right to claim interest on the delayed payment. Since the complainant has accepted the payment offered by the opposite party under protest, by no stretch of imagination, it can be said that his right to claim interest on the delayed payment stood extinguished. Thus, we do not find merit in the contention of learned counsel for the opposite party.

13. Now, the question is what should be the quantum of compensation to be paid to the complainant? The complainant is seeking interest on the insurance claim amount sanctioned at the rate 2% over and above the bank rate in view of clause 9 (6) of Regulations reproduced above. On reading of said clause of the above noted regulations, we find that the clause provides that the payment of insurance dues shall be paid by the insurer within seven days from the date of acceptance of offer, failing which the insurer shall be liable to pay interest @ 2% above the bank rate prevalent at the beginning of the relevant financial year. Thus, in order to get benefit of regulation 9 (6), the complainant is required to establish the date of acceptance of insurance claim. There is no cogent evidence led in this regard. Thus, in absence of the specific date of acceptance of claim, it is not possible to compute compensation in terms of clause 9 (6) of the regulation. This, however, does not mean that the opposite party is absolved of its liability to compensate the complainant for the delayed payment of insurance claim. Thus, looking into the over-all facts and circumstance of the case, we are of the view that interest of justice shall be fulfilled if the complainant is paid 9% interest on the delayed payment w.e.f. 03.06.2012 till the respective dates of payments of two instalments.

14. In view of the discussion above, we allow the complaint and direct the opposite party to pay to the complainant 9% interest on the settled insurance claim w.e.f. 03.06.2012 till the respective dates of payments of instalments of Rs.5.00 crores and Rs.8,82,38,963/-. Opposite party is directed to comply with the directions within six weeks. Free copy of the order be sent immediately to both the parties.

