(2015) 12 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

Case No : 47 of 2010

M/S. SURYA ELECTRONICS — APPELLANT

Vs

UNITED INDIA INSURANCE CO. LTD. & ANR — RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Citation : 2016 1 CPR 204

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : Sanchit Guru, Rajesh Gupta

Judgement

1. The appellant being aggrieved of the order of the Chhattishgarh State Consumer Disputes Redressal Commission (in short, "the State Commission") dated 12.1.2010 has preferred this appeal.

2. Briefly stated, facts relevant for the disposal of this appeal are that the appellant/complainant obtained a shopkeepers insurance policy from the opposite party for insuring his shop as well as goods in stock for trade. The insurance policy was valid w.e.f. 29.8.2006 to 28.8.2007 and the insurance policy extended insurance against peril of burglary, house braking etc. The sum insured was Rs.54,00,000/-.

3. It is the case of the complainant that on the night intervening 9 th and 10 th September, 2006 a burglary took place at the shop of the complainant and the goods worth Rs.36 to 40 Lakhs were stolen. The intimation of the burglary was given to the police as well as insurance company. A surveyor was appointed and the surveyor vide his report dated 29 th April, 2008 came to the conclusion that the complainant has been able to establish the loss of 142 mobile sets worth Rs.5,73,274/- and he could not substantiate the loss because of burglary regarding other items. Thereafter, a supplementary survey report was given stating that M/s Techno Enterprises, from whom the complainant allegedly purchased the other electronic items apart from 142 mobile sets in their affidavit filed before the Commercial Tax Officer denied having sold these allegedly stolen electronic items to the complainant. Taking into account the supplementary

survey report, the insurance company took the view that the claim submitted by the complainant was fraudulent. Accordingly, the claim was repudiated. The complainant being aggrieved of the repudiation of the claim the appellant filed a consumer complaint.

4. The opposite party on being served with the notice of the consumer complaint filed a written statement resisting the complaint. In the written statement opposite party claimed that the insurance claim was rightly repudiated because it was a fraudulent claim.

5. The State Commission on consideration of pleadings and the evidence of the parties after duly considering the survey report as also the supplementary survey report came to the conclusion that the insurance company was justified in repudiating the claim and there was no deficiency in service. Thus, the complaint was dismissed. This has led to filing of the appeal.

6. Learned Shri Sanchit Guru, Advocate for the appellant has contended that the impugned order is not sustainable because the State Commission has ignored the fact that in the first survey report the surveyor on the basis of entries in rough note book of the complainant had calculated that there was a loss of 142 mobile sets worth Rs.5,73,274/- due to burglary which were not purchased from M/s Techno Enterprises, therefore, on the basis of survey report at least the aforesaid sum of Rs.5,73,274/- should have been awarded to the complainant against his insurance claim. No other argument has been advanced.

7. Learned Shri Rajesh Gupta, Advocate on the contrary has argued in support of the impugned order. He has drawn our attention to the special exception clause 7 in the insurance contract wherein it has been provided that company shall not be liable to pay any claim under the insurance policy if fraudulent means or device are used by the insured or any one acting on behalf of the insured to obtain any benefit under this policy and in such circumstance all benefits under the policy shall be forfeited. In support of this contention, learned counsel has relied upon the judgment of this Commission in the matter of Best Food International vs. National Insurance Co. Ltd. & Anr. IV (2009) CPJ 77 (NC , wherein it has been held as under: - "It is well settled principle of insurance that the contract of insurance is that of utmost good faith, and in the present case, it is vitiated by fraudulent act of the complainant, who furnished fabricated documents in support of their claim and hence it is not maintainable. Complainant has come with unclean hands to take the benefit of the insurance cover on false grounds by suppression of material facts, false contentions and fraudulent documents and cannot except remedy or redressal under the Consumer Protection Act. Hence, the complaint is dismissed."

8. We have considered the rival contentions and perused the record. The only grievance raised by learned counsel for the petitioner is regarding the rejection of insurance claim in respect of 142 mobile sets which as per the survey report were actually stone and which were not part of the consignment allegedly sold by

M/s Techno Enterprises. Admittedly, the insurance claim has been rejected in view of clause 7 of the insurance policy under the heading "Special Exception" which deals with the fraudulent claim. Thus, the sole question which needs determination in this first appeal is whether under the aforesaid clause the respondent insurance company was justified in repudiating the claim.

9. In order to find answer to the above question, it would be useful to have a look on the relevant clause of the insurance contract which reads as under: - "SPECIAL EXCEPTION

The company shall not be liable in respect of: -

7. Fraud: Any claim under this policy shall be in any respect fraudulent means or device are used by the insured by any one acting on the insured''s behalf to obtain any benefit under this policy, all benefits under the policy shall be forfeited."

10. On reading of the aforesaid clause, it is clear that if any fraudulent claim is submitted by the insured or someone on his behalf to obtain benefit under the policy the insurance company shall be within its right to forfeit all the benefits under the policy. In the instant case, admittedly the complainant had filed an insurance claim for Rs.34,33,604/- which apart from the value of the 142 mobile sets referred to above included the alleged loss pertaining to other electronic goods which were supposedly purchased by the complainant from M/s Techno Enterprises. On perusal of supplementary survey report, which is not challenged by the complainant during arguments, we find that M/s Techno Enterprises in their affidavit filed before the Commercial Tax Officer have denied having sold the aforesaid items, for which the insurance claim was filed, to the complainant. From this it is evident that the complainant had filed a fraudulent claim to derive undue benefit in respect of the electronic items which were not purchased by him. Thus, in our considered view the State Commission was right in holding that the insurance company in view of the above-noted clause of the insurance contract was justified in repudiating the insurance claim.

11. In view of the discussion above, we do not find merit in the appeal. It is accordingly dismissed.

