**(2013) 02 NCDRC CK 0012**

**In the National Consumer Disputes Redressal Commission**

National Insurance Co. Ltd. And Ors. APPELLANT

Vs

Arihant Packaging And Ors. RESPONDENT

**Date of Decision :** 22-02-2013

**Acts Referred:**

**Citation :** 2013 2 CPJ 417

**Hon'ble Judges :** ASHOK BHAN J.

**Final Decision :** Appeal dismissed

## Judgement

1. APPELLANT Insurance Company which was the Opposite Party before the State Commission has filed this Appeal against the judgment and order dated 26.6.2007 passed by the State Consumer Disputes Redressal Commission, Madhya Pradesh (in short, ''the State Commission'') in Complaint No. 25/01 wherein the State Commission allowing the two complaints by a common order, has directed the Appellant along with New India Assurance Co. Ltd. (OP in CC No. 24/01) to pay a sum of Rs. 1,00,000 for the loss caused to the building and Rs. 4,00,000 for the loss to the plant and machinery to the complainant/Respondent along with interest @ 7% from the date of filing of complaints till payment in proportion to their liability under the policies. Rs. 5,000 were awarded towards costs. Facts:

Complainant/Respondent Partnership Firm (hereinafter referred to as the ''Respondent'') set up a plant at Plot No. 79/6, Industrial Estate, Maxi Road, Ujjain for manufacturing polythene bags. The factory premises consisted of a shed admeasuring 40 x 25 ft. constructed of bricks and cement mortar having only inside plaster and roof of G1 Sheet. Respondent obtained two policies from the Appellant and the New India Assurance Company Ltd. as per the following details:

(i) Insurance with the New India Assurance Co. Ltd., Divisional Office, Ujjain:

2. ON the intervening night of 9th and 10th July, 2000 a fire broke cut at the factory of the Complainant which was extinguished by the Fire Brigade. Both the

Insurance Companies were informed about the fire incident. The New India Assurance Company Ltd. got the investigation and survey done by Surveyors - Pradeep Chhajed, C.A. and N.K. Gupta and Company while the National Insurance Co. Ltd. got the loss assessed by Surveyors, Madhusudan Shyamsunder & Company and N.K. Gupta & Company. Surveyors appointed by the New India Assurance Company Ltd. submitted their report on 16.10.2000 whereas the Surveyors appointed by the National Insurance Company Ltd. submitted their report on 8.12.2000. Under both these reports the insurers'' liability was assessed as NIL. Relying upon the reports of the Surveyors, both the Insurance Companies vide letter dated 27.11.2000 and 2.1.2001 repudiated the claims filed by the Respondent. According to the Respondent, the fire to the factory was caused by short -circuiting and the entire stock worth more than Rs. 10,00,000 was damaged. The damage to the plant, machinery and factory building was total. Respondent, being aggrieved, filed the complaints before the State Commission claiming Rs. 10,00,000 for the loss of stock (finished and unfinished goods), Rs. 11,01,000 for the damage to the plant and machinery and Rs. 3,75,000 for the damage to the building. Appellant, on being served, entered appearance and filed its written statement contesting the complaint, inter alia, on the grounds; that the fire was not caused due to short -circuiting of the electricity line; that during the visits of the Surveyors presence of smell of kerosene was noticed making the entire incident suspicious; that the claim was rightly repudiated and there was no deficiency in service on their part.

3. NEW India Assurance Co. Ltd. resisted the complaint on the grounds; that there was no stock either of the finished or unfinished goods on the date of the incident; that the loss to the building and machinery was not in total but partial to the tune of Rs. 22,865 and Rs. 1,78,486/respectively.

4. STATE Commission, relying upon the reports of the Fire Brigade and the Police, came to the conclusion that the fire had been caused due to short -circuiting. Accordingly, the State Commission partly allowed the complaints with the following directions: (i) That the New India Assurance Co. Ltd. (OP in CC No. 24/2001 shall pay to the complainants Rs. 1,07,571 for the loss caused to the stock (finished and unfinished goods). However, we leave the complainants free to claim further damages on this count by taking recourse to such other remedy as may be available to it in the law.

(ii) That both the opposite parties, i.e. New India Assurance Co. Ltd. and the National Insurance Co. Ltd. in proportion to their liability under the policies in question, shall pay to the complainants Rs. 1,00,000 (Rs. one lakh only) for the loss caused to the building and Rs. 4,00,000 (Rs. four lakh only) for the loss to the plant and machinery.

(iii) The awarded amount shall carry interest @ 7% p.a. from the date of complaints till payment.

(iv) Opposite parties shall also bear complainants'' costs which is quantified at

 

Rs. 5,000 for both the complaints.

State Commission observed as under:

As regards the cause of fire, while according the complainant the fire was caused due to short -circuiting, the opposite party insurance companies on the other hand maintained that on investigation no such short -circuiting in electric line or appliances was noticed. The complainant has produced and proved in evidence certificate of Fire Officer of the Fire Brigade, Ujjain and the police report with spot inspection panchnama (vide Annexures P/5 and P/6), certifying the cause of fire was short -circuiting in the internal electric line of the factory. As against this, the opposite party Insurance Companies have filed two survey reports dated 16.10.2000 and 8.10.2000 given by the said two groups of the Surveyors who were of the opinion that the fire did not appear to be incidental or fortuitous in nature, but self inflicted. They also claimed to have experienced for smell of kerosene during their visit to the factory coming from the debris all around. Surveyor, N.K. Gupta & Co., also claimed to have got the site inspected by an Electrical Company namely M/s. Neema and Oswal, who... said on inspection found that no electric cable of the factory was burnt and there was no short -circuiting in the electrical installations. In both the survey reports there is reference of some clarification obtained from the Fire Brigade authorities who it is said admitted to have conducted no investigation as the cause of fire. However, no report of M/s. Neema and Oswal nor the said clarification letter of the fire brigade officers is filed or proved in evidence. There is absolutely no mention of any kerosene smell being felt in the spot inspection report of the police or the report of the fire Brigade who were the first to reach the spot and extinguished the fire. The SHO, PS, Madhav Nagar, Ujjain in his memo dated 25.11.2002, Annexure P/2. has informed the complainant that the police investigation has been closed as the fire was found to have been caused by short -circuiting not by way of any mischief. There is, thus, preponderance of evidence pointing towards the fire having been caused by short -circuiting. It was purely accidental in nature squarely covered by the policies in question.

10. This brings us to the question of loss to the building, plant and machinery. As already stated these items were insured with both the opposite party -Insurance Companies. The total insurance of the building was to the tune of Rs. 3,57,000 in the ratio of 65% : 35% with New India Assurance Co. Ltd. and the National Insurance Co. Ltd. respectively. The total insurance of the plant and machinery was to the tune of Rs. 11,01,000 assured by both the Insurance Companies in the ratio of 22.71%; 77.29%. It is interesting to note that while the Surveyors appointed by the New India Assurance Company Ltd. virtually made no assessment of loss to these two items, the Surveyors appointed by the National Insurance Company Ltd. vide their report dated 8.12.2000 assessed the loss to the building at Rs. 21,865 and to the plant and machinery at Rs. 1,78,486 with a further conclusion that proportionate liability of the National Insurance Co. Ltd. on these two counts comes to Rs. 8,300 and Rs. 1,37,952. After applying excess

 

Clause the net liability of the company was assessed at Rs. 1,35,954 only. As against it, the complainants claimed the entire sum assured on both the counts and it was alleged that loss to the building, plant and machinery was total. In our considered view, while the complainants claim of total loss was clearly exaggerated, the assessment made by M/s. Madhusudan Shyamsunder and Company and N.K. Gupta & Company is also found clearly on the lower side.

11. Taking the loss to the building first, as already stated that the building consisted of a shed constructed of bricks and cement mortar with only inside plaster and the roof of GI sheets. The photographs produced by the complainant clearly go to show that the structure after fire was intact. Although the internal parts of the structure such as cabins, mazanine flooring, etc. were destroyed in the fire. There was damaged to the plaster as also to the sheets of the roof certainly. It was not a case of total loss, but at the same time assessment of loss made at Rs. 22,885 by the Surveyors of the National Insurance Co. Ltd. on the face of it looked ridiculous. However, no definite evidence as to the extent of loss to the building could be adduced by the complainant. A report obtained from Shubham Construction assessing the loss to the building at Rs. 17,800 is too cryptic to be relied upon. Having regard to the facts and circumstances of the case, we feel inclined to hold that the loss to the building can safely be assessed at Rs. 1,00,000.

12. As regards the loss to the plant and machinery, the complainant has produced some expert evidence to demonstrate that the machines were rendered useless and unrepairable. As against it, Surveyors appointed by the National Insurance Co. Ltd. have assessed the total loss on repair basis at Rs. 1,78,486. However, the Surveyors did not seem to have obtained any expert opinion about the utility of the machines after the fire. Similarly, the claim of total loss made by the complainant is also wholly unacceptable. We are left with no option, but to make some notional assessment keeping in view the rival claims. In our considered view, the depreciated valued of the machinery of the date of the fire can be assessed at Rs. 8 lakh and loss to the machinery can be computed to the extent of 50% of the said value, that is to say at Rs. 4,00,000 only.

New India Assurance Co. Ltd. has accepted the order passed by the State Commission and has not filed any appeal. However, Appellant, being aggrieved, has filed the present appeal. We have heard the learned Counsel for the parties at length.

5. LEARNED Counsel appearing for the Appellant contends that the State Commission has wrongly placed reliance upon the certificate of the Fire Officer of the Fire Brigade, Ujjain and police report with spot inspection Panchnama; that the Surveyors after detailed investigation, had come to the conclusion that the fire did not appear to be accidental or fortuitous in nature but self inflicted; that the detailed reports of the Surveyors with regard to the loss to the stock, building, plant and machinery were filed on record and the amounts as permissible under the policy were allowed by the Surveyors; that the State

 

Commission wrongly assessed the loss to the plant and machinery; that the depreciated value of the machines have been taken to Rs. 8 lakh even though they were very old machines; that the loss of the machinery has been computed by the State Commission to the extent of 50% of this amount, i.e. Rs. 4 lakh without any basis or evidence on record, that during the raid on 29.6.2000 at the factory premises of the complainant, a Panchnama was prepared by the officers of the Department of Central Excise and Customs which clearly showed that records were not tallying with the physical verification of stocks. As against this, learned Counsel for the Respondent supports the order passed by the State Commission.

The facts of the case are not in dispute before us.

6. THE claims made by the Respondent firm were repudiated by both the Insurance Companies on the grounds that the fire at the factory premises did not take place due to short -circuiting and that the incident of fire was fabricated as during the visits of the Surveyors presence of smell of kerosene was felt. Learned Counsel appearing for the Appellant has placed reliance upon the reports of the Surveyors in which they relied upon the site inspection report of Electrical Company namely M/s. Neema & Oswal that there was no short -circuiting and the clarification sought from the Fire Brigade regarding the cause of fire. Report of the Electrical Company, Neema & Oswal and clarification of the fire brigade, if any given, have not been produced on record. Under the circumstances, report given by the Electrical Company, Neema & Oswal and the clarification of the fire brigade cannot be relied upon. On the contrary, in the spot inspection report of the police and the report of the Fire Brigade, there is no mention about the kerosene smell emanating at the spot. The SHO, PS, Madhav Nagar, Ujjain in his memo dated 25.11.2002 informed the Respondent that the police investigation has been closed as the fire has been found to be caused due to short -circuit and not by way of any mischief. Similarly, in the report submitted by the Fire Brigade the cause of incident is shown to be due to short circuit. We concur with the finding recorded by the State Commission that the fire was caused due to short circuit. As regards to the damage to the stock (finished and unfinished goods), plant, machinery and building, the New India Assurance Co. Ltd. has accepted its liability and paid the amount to the Respondent as directed by the State Commission. The total insurance of the building was to the tune of Rs. 3,75,000 in the ratio of 65%: 35% with the New India Assurance Co. Ltd. and the National Insurance Co. Ltd. respectively. The total insurance of the plant and machinery was to the tune of Rs. 11,01,000 in the ratio of 22.71% : 77.29.% between both the insurance companies respectively. Once, the part claim has been accepted by one of the Insurance Companies which is also a nationalized Insurance Company and the payment has been made to the Respondent, the other Insurance Company cannot be allowed to raise objection with regard to the admissibility of the remaining part of the claim as it would lead to passing of contradictory orders. Otherwise also on merits, we agree with the assessments made by the State Commission with regard to the loss to the building, stock, plant and

 

machinery given in paras 10, 11 and 12. The State Commission has considered all the facts and evidence led by the parties in details and we find no reason to differ with the same. For the reasons stated above, we do not find any merit in the appeal and dismiss the same with no order as to costs.