(2009) 02 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO. LTD. APPELLANT

Vs

Blanny C. Dsouze RESPONDENT

Date of Decision : 02-02-2009

Acts Referred:

Citation : 2009 2 CPJ 110

Hon'ble Judges : R.K.BATTA , S.K.NAIK J.

Advocate : ATUL NANDA

Judgement

1. THE complainant had insured stock -in -trade in his godown D.No. 2 -58 A.B.C. The stock -in -trade included Shamiyana, Pendal, furniture, fixtures, Tarpal, stage decoration articles, stage backdrop screen, plastic and steel articles, etc. for marriage and engagements and other functions for hire. During the currency of the policy, godown caught fire on 10.3.2006 at about 2.10 a.m. and the entire stock -in -trade inside the godown was totally destroyed. According to the complainant, he suffered a loss of Rs. 12,00,000. The petitioner/ Insurance Company sent a voucher for Rs. 3,50,000 towards full and final settlement. The complainant had pressed for the entire claim, but he was threatened if he were to pursue his claim for the entire insured sum; even the claim, which was being paid, would be repudiated. According to the complainant, on account of his financial position, mounting loans, pressure of the private parties to repay the debts, he was compelled to sign that voucher without prejudice to his right to claim the entire claim amount.

2. THE complainant thus approached the District Forum. The District Forum on the basis of material on record found that the dispute was only with regard to the assessment made by the Surveyor. On perusal of the Survey Report, it was found that the Surveyor had made depreciation of 50% for some items, 60% for few items and 20% for only one item. The Surveyor considered the present replacement cost of stock -in -trade at Rs.7,85,003 minus salvage Rs. 10,000. After depreciation, he arrived at Rs. 3,72,379 as the present market value. On the question of depreciation, the Surveyor came to the conclusion that normal

life of Shamiyana cloth material is about 4 years if well maintained and notwithstanding that such items have not much re -sale value, yet he has taken 50% depreciation for determining the market value. The District Forum also noted the term and condition of the policy as under: "The Company shall pay to the insured the value of the property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof.

3. HOWEVER , the District Forum held that in the absence of any depreciation clause in the policy, the Surveyor could not deduct 50% of depreciation of the amount under the present replacement cost. Therefore, the District Forum directed the opposite parties to pay the present replacement value of the stock -in -trade i.e. Rs. 7,85,003 without any depreciation by deducting the other standard deductions under the policy along with interest @ 8% per annum from the date of complaint till the date of payment with cost of Rs. 1,000. This order was challenged by the Insurance Company before the State Commission. The State Commission held that the Surveyor had assessed the loss at Rs. 7,85,003 and after deducting salvage of Rs. 10,000, he arrived at the figure of Rs. 7,75,000. From this amount, he deducted a sum of Rs. 4,03,624 as depreciation for which he has not assigned any reason. It has been observed by the State Commission that in the fairness the Insurance Company ought to have settled the claim of the complainant by paying a sum of Rs. 7,75,000 instead of paying Rs. 3,50,000. The State Commission has also observed that after looking into the report of the Surveyor, no reason whatsoever has been assigned by the Surveyor for deducting Rs. 4,03,624 towards depreciation charges. However, the claim was restricted to Rs. 7,75,003 with 8% interest from date of complaint before District Forum till realization after deducting sum of Rs. 3,50,000 already paid.

4. WE have heard the learned Counsel for the petitioner. The complainant/ respondent had sent written arguments and had stated that he is unable to incur heavy expenditure for engaging an Advocate at Delhi even though a sum of Rs. 10,000 was remitted to him by petitioner for travel and allied expenses, as ordered by this Commission on 14.8.2008.

5. LEARNED Counsel for the petitioner drew our attention to the report of the Surveyor and, particularly, to page 34 of the report on record and submitted before us that the State Commission was not justified in holding that no reasons are given by the Surveyor for making deduction on account of depreciation since the Surveyor has categorically stated that the normal life of Shamiyana cloth material is about 4 years if well maintained but in fact these items have not much re -sale value and, as such, 50% depreciation has been taken in determining the market value thereof. It was further contended by the learned Counsel for the petitioner that the report of the Surveyor is not justifiable unless there are strong reasons to controvert the same. Learned Counsel for the petitioner drew our attention to the finding of the District Forum, wherein it was stated that in absence of any depreciation clause, Surveyor could not deduct

50% depreciation to determine the present replacement cost. We had asked the learned Counsel for the petitioner to place before us any industry standard for working out depreciation of the materials, which are subject matter of this complaint, but he was not able to produce any such standard but he placed before us Indian Motor Tariff, which deals with the depreciation with regard to vehicles. According to learned Counsel for the petitioner, the report of the Surveyor in terms of Section 64UM(2) of the Insurance Act, 1938 could not be discarded. It is further contended that the Surveyor Report is an important document, which has to be taken into consideration while deciding the claim. In this respect, a number of judgments of this Commission have been placed before us, which state that the report of the Surveyor is an important and valuable piece of evidence, which is to be taken into consideration while deciding the claim. Our attention has been particularly drawn to the case of National Insurance Co. Ltd. v. Winner Chorates (P) Ltd., II (2004) CPJ 1 (NC) and National Insurance Co. Ltd. v. Shree Laxmi Textile Industries and Ors., III (2004) CPJ 3 (NC). Learned Counsel for the petitioner, therefore contends that the orders of Fora below are to be set aside.

6. THE respondent in his written arguments has stated that from the evidence on record, it is clear that the items, which were destroyed in fire, were purchased within one year from the date of accident and, as such, the Surveyor should not have deducted 50% and 60% of the value of the items, as depreciation. He has referred to the terms and conditions of the policy of the Insurance Company that the Company shall pay to the insured the value of the property at the time of happening of its destruction or the amount of such damage or at its option re -instate or replace the property or any part thereof. He also states that the policy does not stipulate anything about depreciation. It is, therefore, submitted by the complainant in the written arguments that the revision be dismissed. He has relied on some judgments of this Commission, which do not squarely apply to the matter under consideration.

7. THE dispute in this revision is restricted to the depreciation deducted from the value of the stock -in -trade. The District Forum had held that there was no depreciation clause in the policy and the Surveyor could not deduct 50% as depreciation. The term and condition of fire policy, which is relevant for this purpose has already been quoted above. Therefore, the Company has to pay the value of the property at the time of happening of its destruction or the amount of such damage or at its option re -instate or replace the property or any part thereof. The option to reinstate or replace has to be exercised by the Company. The term and condition itself provides guidelines namely, "value of the property at the time of happening of its destruction or the amount of such damage". This condition itself shows that the value for the purpose of payment is the value of the property at the time of happening of its destruction and this value obviously and necessarily has to be depreciated value of property at the time of happening of its destruction. It appears that no industry standards are available to determine the depreciation of the stock -in -hand, which were destroyed in fire.

However, the Surveyor had given reasons for depreciation to the effect that the normal life of Shamiyana cloth material is about 4 years, if well maintained and, in fact, such items have no re -sale value and as such he took the depreciation at 50% for determining the market value of the goods, which were destroyed. This Commission has repeatedly held that the report of the Surveyor is an important and vital document, which has to be taken into consideration. The State Commission has discarded the report of the Surveyor on the ground that it does not disclose any reason, which is not correct. The Surveyor has given reasons for deduction to which we have already made reference. In fact, the affidavit of the Surveyor - M. Dinesh Kamath, RW 2 was filed and interrogatories were answered by the Surveyor. The answer of the interrogatories is found at Annexure P5 (Pages 44 -47) of the record. In the interrogatories, it has been stated by the Surveyor that he assessed the loss on the basis of the value of the stock at the time of accident; deduction of depreciation is made to arrive at fair market value of the property at the time of fire accident. He has further stated that to arrive at the value of the property at the time of happening, a certain percentage (depreciation) of its replacement value is deducted from the replacement value prevailing at that time. He has also stated that depreciation depends on amongst other things, the type of property, time and the purpose and in the case under consideration the property is movable consisting of cloth, carpet, plastic, etc. and the purpose of applying depreciation is to arrive at the value of the items damaged at the time of happening. According to him the value of items in question diminishes sharply the moment they are put into service and he has shown the same by way of graph.

8. THERE cannot be any dispute that the goods in question are subject to deterioration during the course of use and naturally with use of such items its value depreciates. The question, however, is how much depreciation is considered reasonable in the facts and circumstances of the case. According to the complainant, the goods, which were destroyed in fire, had been purchased within a period of one year from the date of accident in question. In our opinion, taking into account, the nature of goods in question, normal susceptibility to deteriorate by use, the life of such items and date of purchase of the said items, in our opinion, 25% depreciation on all items shown in the report of the Surveyor and, particularly, shown at pages 33 and 34 of the record would be just, fair and equitable to both sides. Taking the life of items in question as 4 years as stated by the Surveyor, depreciation every year for use of such items can be taken at the rate of 25% of the value of such items. The working of the amount payable to the complainant after 25% deduction of depreciation would be as under: Claimed Assessed Sl. Particulars Oty. Amount Qty. Rate Year of Replace - Dep% Depre Value of No. (Rs.) (Rs.) purchase ment Cost ciated Property at Rs. amount the time of A in Rs. happening B in Rs. 1. Plastic Chairs 750 114750.00 700 153 March 107100.00 25 26775.00 80,325.00 Hand Less with hand 250 38250.00 2251 53 2005 34425.00 25 8,606.25 25,818.75 2. Plastic Fiere plate Size 7" Big Size with Flower design 1000 10,000.00 900 8/ - -do - 720.00 25 1,800.00

5,400.00 1000 20,000.00 800 18/ - -do - 14,400.00 25 3,600.00 10,800.00 3500 77,000.00 3,000 25/ - -do - 75,000.00 25 18,750.00 56,250.00 3. Shamiyana 18''x18'' 15 pcs. 1,16,640.00 15pcs. 7776 -do - 1,16,640.00 25 29,160.00 87480.00 10''x30'' 18 pcs. 64,800.00 16 pcs. 3600 -do - 57,600.00 25 14,400.00 43,200.00 9''x18'' 10 pcs. 19,440.00 10 pcs. 1944 -do - 19,440.00 25 4,860.00 14,580.00 18''x18'' 11 pcs. 42,768.00 10 pcs. 3888 -do - 38,880.00 25 9,720.00 29,160.00 15''X30'' 6 pcs. 27,000.00 6 pcs. 4500 -do - 27,000.00 25 6,750.00 33,750.00 4. Pendals 18''x18'' 15 pcs. 58,320.00 21pcs. 3888 -do - 81,648.00 25 20,412.00 61,236.00 18''x18'' 20 pcs. 110,660.00 - - -do - - - 15''x15'' 15 pcs. 40,500.00 15pcs. 2700 -do - 40,500.00 25 40,500.00 20,250.00 5. Carpets Red Mat 15''x10'' 10 pcs. 12,000.00 10 pcs. 1200 -do - 12,000.00 25 3,000.00 9,000.00 Stage Carpet 18''x10'' 25 pcs. 36,000.00 23 pcs. 1440 -do - 33,120.00 25 8,280.00 24,800.00 Green Floor 6'' 60] 10 pcs. 28,000.00 5 pcs. 2800 -do - 14,000.00 25 3,500.00 10,500.00 9"x18" 5 pcs. 4,200.00 5 pcs. 840 -do - 4,200.00 25 1,050.00 3,150.00 Green Mat 6"x60" 360 sq.ft. 2,700.00 360sq.ft. 750 -do - 2,700.00 25 675.00 2025.00 6. Screen (a) drop 12''x24'' 20 pcs. 36,000.00 18 pcs. 1800 -do - 32,400.00 25 8,100.00 24,300.00 (b) Stage Backdrop 24''x12'' 5 pcs. 12,500.00 4 pcs. 2500 -do - 10,000.00 25 2,500.00 7,500.00 (c) Chunnath Parda 10''x18'' 3 pcs. 3,300.00 3 pcs. 1100 -do - 3,300.00 25 825.00 2,475.00 7. Side wall Curtain 18''x6'' 15 pcs. 14,200.00 15 pcs. 950 -do - 14,250.00 25 3,562.50 10,687.50 8. Steel tables 6''2'' 20 pcs. 26,000.00 2 pcs. - - 1,000.00 25 250.00 750.00 (repair cost) 9. Plastic Buckets 20 pcs. 2,282.00 - - -do - Deleted 10. Frills Decorative type 40''x4'' (a)20'' 6 pcs. 18,000.00 6 pcs. 3,000 -do - 18,000.00 25 4,500.00 1,3500.00 X2'' 6 pcs. 9,000.00 6 pcs. 1,500 -do - 9,000.00 25 2,250.00 6,750.00 11. Tarpaulin Blue 15 pcs. 45,000.00 12 pcs. 800 -do - 9,600.00 25 2,400.00 7,200.00 20''x30'' White 25,000.00 8 pcs. 200 -do - 1,600.00 25 400.00 1,200.00 10''x15" 10pcs. 25,000.00 8 pcs. 200 -do - 1,600.00 25 400.00 1,200.00 1,01,4310.00 7,85,003.00 1,96,250.75 58,8752.25 less salvage value Rs. 10,000 Total Payable Rs. 578752.25

9. IN view of the above, the revision is partly allowed and the petitioners are directed to pay a sum of Rs. 5,78,752.25 to the complainant with 8% interest per annum from the date of complaint filed before the District Forum till realization. The sums already paid to the claimants shall be adjusted. In the facts and circumstances, there shall be no order as to costs in the proceedings before this Commission. R.P. partly allowed.

