(2011) 04 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd. APPELLANT

Vs

Naim Akhtar RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Citation : 2011 0 NCDRC 237 : 2011 2 CPJ 179 : 2011 2 CPR 291

Hon'ble Judges : Suresh Chandra J.

Final Decision : Appeal dismissed

Judgement

1. AT the outset, it is observed that there is a delay of 37 days in filing the revision petition. While a separate application has been filed by the petitioner for condonation of delay in filing the revision petition, the period of delay is not mentioned by the petitioner and the space is left blank by the petitioner in the application. In support of its request for condonation of delay, the petitioner has submitted as under:- "2. That there is some delay in filing the Revision Petition but delay is neither intentional nor deliberate but due to circumstances beyond the control of the petitioner as the case file had moved from Branch office to Divisional office to the Regional office and then to head office which are located in different towns and states. That apart sanction and approval are required to prosecute petition and further legal opinion about prosecutibility of Revision Petition took further time hence delay has been caused."

2. IT is clear that the petitioner has not given any satisfactory or convincing reason in support of its application for condonation of delay, which is of 37 days as per calculation based on different dates. We are, therefore, not inclined to condone the delay. We have also heard counsel for the petitioner on merits and perused the record. Briefly stated, the complainant, who was an unemployed person, had taken the work of construction of Alsu-Jambla Road from 3/00 to 8/900 Kms under Pradhan Mantri Gram Sadak Yojna. He obtained an insurance cover from the petitioner Co. for the risks for a total sum of Rs.60 lakhs for the said road and the policy was effective from 02.06.2006 to 01.06.2007. According to the complainant, he had constructed 5 Kms. of road but in the month of July

2006 due to heavy rains, a portion of this road had washed away. He, therefore, reported the damage to the petitioner Co. which deputed proforma respondent Shri N.S. Sidhu to carry out the assessment of loss. The complainant supplied necessary documents in support of his claims to the proforma respondent Shri N.S. Sidhu and he also got the loss assessed from another surveyor Shri Hans Raj. The claim of the respondent/complainant, however, was repudiated on 29.01.2007 by the petitioner Insurance Co. and hence the consumer complaint came to be filed. On appraisal of the issues and evidence adduced, the District Forum allowed the complaint by directing the petitioner Co. to pay an amount of Rs.10 lakhs by way of compensation along with interest @ 9% p.a. from the date of institution till payment in addition to cost of Rs.2,000/-. Appeal filed by the petitioner Co. against this order came to be dismissed by the impugned order by which the order of the District Forum was upheld by the State Commission. While accepting the complaint of the respondent against the petitioner Co., the Fora below have given their concurrent finding in favour of the respondent by well-reasoned and detailed orders. Upholding the order of the District Forum and dismissing the appeal of the petitioner Co., the State Commission has recorded the following reasons in its impugned order:- "16. In the present case, registered Surveyor-proforma respondent had also carried out the discreet enquiry and his grounds of rejection of claim was, loss was not covered by the insurance, as it was caused by heavy rains and heavy rains is a natural phenomena during rainy season. In our view the proforma respondent was wrong in rejecting the claim of the respondent. Report of Village Patwari at page-152 of the complaint file, clearly supports the claim of loss. He had clearly mentioned, that there had been heavy rains on 29.06.2006, 08.07.2006, 09.07.2006 and 22.07.2006 and this fact is recorded by him in his Daily Diary, Nos.362 dated 29.06.2006; 371 dated 08.07.2006; 372 dated 09.07.2006 and 396 dated 22.07.2006. That Alsu-Jambla Road, that was under construction had been extensively damaged, and such rain had occurred only after a period of 15 to 20 years in that area. Even this fact also finds corroboration from report of Pradhan, Gram Panchayat Jambla, who had also mentioned in his report that due to heavy rains during months of July, August and September, 2006, Alsu-Jambla Road, which was under construction had been extensively damaged as it was washed away at many points. Even in the photographs, there is no trace of road at some points. As such version of proforma respondent that no work had been carried out at the valley site is rejected. Thus in our opinion the respondent No.1 was required to be compensated for the restoration of road. His claim is also supported from the report of Shri Hans Raj, Surveyor who had calculated the loss to the tune of Rs.10,70,944/-. 17. Even Shri K.D. Chandel, Assistant Engineer, who was in charge of the said work and was called for cross-examination at instance of the appellant. He was not in a position to point out any infirmity in the report of Shri Hans Raj, Surveyor. Shri Hans Raj had also filed his affidavit in support of his report. Shri K.D. Chandel, Assistant Engineer had deposed that Alsu Jamble Road under insurance cover had suffered damaged to the tune of Rs.12,00,000/- to Rs.15,00,000/-. On the basis of re-appreciation all the materials on record, claim lodged by the respondent No.1 cannot be said to be fraudulent as alleged by the appellant. Hence we are of the confirmed view that compensation to the tune of Rs.9,80,000/- for the damage caused to the work under insurance, and compensation amounting to Rs.20,000/- which was awarded for mental, physical and financial loss caused to the respondent No.1 for non-settlement of his claim for a longer period and thereafter repudiation, is fully justified in view of the facts and circumstances of the case. 18. In the facts of this case, ratio of the decision of Hon"ble Apex Court in case of Dharmendra Goel Vs. Oriental Insurance Co. Ltd. III (2008) CPJ 63 (SC) is fully attracted. It was held that, Insurance Company being in a dominant position, often acts in an unreasonable manner and after having accepted the value of a particular insured goods, disowns that very figure on one pretext or the other, when they are called upon to pay compensation. This take it or leave it, attitude is clearly unwarranted not only as being bad in law, but ethically indefensible."

We agree with the view taken by the State Commission. During the admission hearing, counsel for the petitioner has, however, relied on the judgement of the Apex Court in the case of National Insurance Co. Ltd. Vs. Harjeet Rice Mills [(2005) 6 SCC 45]. In that case, in para 6 of the judgement, the Hon"ble Supreme Court has observed as under:- "6. We are of the view that the State Commission should have given an opportunity to the appellant before us to prove the investigation report. Section 64-UM of the Insurance Act cannot stand in the way of the Insurance Company in establishing that the claim was a fraud on the Company, or that it was a case of deliberately causing a fire so as to lay the foundation for an insurance claim. Similarly, the Commission did not apply its mind to the aspect highlighted that the first police investigation was reported to be perfunctory and a fresh, proper investigation had been recommended. Similarly, the discrepancy in the capacity of the godown and the possibility that what was lost was only or mainly paddy husk, should have persuaded the Commission to make a proper enquiry before deciding to accept the surveyor''s report in this case. The High Court, in our view, has failed to exercise its appellate jurisdiction properly. It failed to see that it had the duty as the Appellate Authority to satisfy itself that no fraud was involved and that the claim was genuine and sustainable. We are of the view that adequate prima facie material was available to warrant a proper enquiry on that question. In this situation, we are satisfied that interference is called for in this appeal."

3. IT is the contention of the counsel for the petitioner that since in the present case also the complainant/respondent had engaged a private surveyor who was not licensed and yet the fora below relied on his report and hence committed a grave error while accepting the complaint based on his report, a fresh enquiry was called for in the matter keeping in view the ratio laid down by the Apex Court in the case (supra) rather than accepting the claim of the respondent/ complainant based on the report of the unlicensed surveyor. We have gone through the judgement (supra) of the Apex Court but we cannot agree with the contention of the learned counsel because the facts and circumstances of the

present case and those in the case of Harjeet Rice Mills are different. In the present case, the State Commission in its detailed order has carefully considered the report of the approved surveyor engaged by the petitioner Co. as well as the unlicensed private surveyor engaged by the respondent/complainant and on appreciation of the evidence adduced by the parties, rejected the finding of the proforma respondent/registered surveyor while accepting the complaint. Reasons recorded by the State Commission in favour of this finding, as reproduced above, are sound and we agree with the same. In the circumstances, the judgement (supra) cannot provide relief to the petitioner in the present case. The counsel for the petitioner has fairly admitted that there is no other legal issue involved in the petition. We are, therefore, convinced that there is no substance in the revision petition, which would justify our interference with the concurrent finding of the fora below. Revision petition, therefore, stands dismissed both on the grounds of limitation and on merits.