(2014) 08 NCDRC CK 0102

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO. LTD. APPELLANT

Vs

Punjab Fibres Ltd RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Citation : 2014 0 NCDRC 546 : 2014 4 CPJ 51

Hon'ble Judges : K.S.CHAUDHARI J.

Advocate : KISHORE RAWAT , Mayank Sharma

Judgement

1. THIS appeal has been filed by the appellant against the order dated 20.04.2007 passed by the State Consumer Disputes Redressal Commission, UT Chandigarh (in short, ''the State Commission '') in Consumer Complaint No. 88of 2006 - Punjab Fibres Ltd. Vs. National Insurance Co. Ltd. by which, while allowing complaint, OP was directed to pay balance of Rs.15,76,844/ - with 6% p.a. interest from 25.4.2006 till payment and Rs.20,000/ - were allowed as cost.

2. BRIEF facts of the case are that complainant/respondent obtained insurance policy for its factory buildings, plant & machinery and stocks from OP/petitioner for a period commencing from 2.12.2003 to 1.12.2004 under cover note No.29342 for a sum of Rs.10.25 crores. On 21.10.2004, fire broke out in the factory at 3.15 p.m. and complainant ''s insured premises suffered heavy loss. Intimation was given immediately to fire brigade department and police and intimation was also given to OP. On the same day, OP appointed M/s. S. Soni & Co. as surveyors, who vised factory premises on 21.10.2004 and 22.10.2004 and requested complainant to furnish some information, which was furnished. Complainant lodged claim for Rs.34,05,698/ - vide letter dated 25.1.2005. It was further submitted that in the original claim estimated value of repairs of Rotary Filters was mentioned as Rs.6,84,295/ -, but actually Rs.3,19,869/ - were incurred in repairs; hence, claim reduced to Rs.30,41,272/ -. On 9.9.2005, complainant received letter from surveyor in which it was mentioned that Rotary Filters were not found damaged in the survey and surveyor rejected claim regarding Rotary Filters without any basis. It was further submitted that rate of

construction mentioned by the surveyor in the survey report was very high and was done with an objective of reducing claim substantially and ultimately, OP finalised claim for a sum of Rs. 6,64,300/ - in full and final settlement of the claim. On receipt of cheque of aforesaid amount dated 31.3.2006 by letter dated 25.4.2006, complainant immediately lodged his protest vide letter dated 15.5.2006 and requested OP to re -calculate the loss on the basis of valuation report submitted by complainant vide letter dated 20.3.2006. OP did not consider complainant ''s request. Alleging deficiency on the part of OP, complainant filed complaint before State Commission. OP resisted complaint and admitted issuance of policy, but submitted that policy was subject to reinstatement clause. It was further submitted that surveyor appointed by OP assessed claim and accordingly full and final payment was made to the complainant. OP denied that it had suggested complainant to get the value assessed from the Government approved valuer M/s. Accurate Surveyor and Valuer. It was further submitted that claim regarding Rotary Filters was duly noticed by surveyor, but it was rejected after consideration on merits by the surveyor. OP denying deficiency, prayed for dismissal of complaint. Learned State Commission after hearing both the parties allowed complaint as mentioned above against which, this appeal has been filed. None appeared for respondent even after service and respondent was proceeded ex -parte

3. HEARD learned Counsel for the appellant and perused record.

4. LEARNED Counsel for the appellant submitted that learned State Commission has committed error in allowing Rs.14,84,406/ - against damage to blow room building and further committed error in allowing amount of rotary filter; hence, appeal be allowed and impugned order be modified. It is not disputed that complainant ''s premises including plant & machinery and stocks were insured by OP and during subsistence of insurance policy fire broke out in the factory which caused heavy loss to blow room building, plant & machinery and OP has made payment of Rs.6,64,300/ - which has been accepted by complainant under protest.

5. OP has not compensated loss to the rotary filter and learned State Commission rightly observed that this rotary filter was nothing, but primary and secondary cases. In paragraph 14 of the Surveyor ''s report the surveyor has clearly observed that the rollers, primary & secondary cages and housing etc. got damaged and needed replacement and in such circumstances, denying compensation for rotary filter by the surveyor was not in accordance with surveyor report and learned State Commission rightly allowed Rs.3,19,869/ - as per actual repair bills of rotary filter.

6. AS far loss to plant and machinery, surveyor allowed Rs.4,36,869.40 and learned State Commission has upheld this amount and OP had already made payment of this amount to the complainant as full and final settlement. In such circumstances, this amount is also not disputed. Now, the dispute remains only pertaining to the loss or damage to the blow room building. Surveyor has allowed

Rs.2,58,795.10 whereas learned State Commission has allowed Rs.14,84,406/ - on depreciation basis for the blow room building. Learned Counsel for the appellant submitted that complainant claimed Rs. 6,98,976/ - for repair of the blow room, but learned State Commission erroneously allowed full depreciated value of blow room Rs. 14,84,406/ - which is apparently error on the face of record. I agree with the submission of learned Counsel for the appellant and find that more than Rs. 6,98,976/ - as claimed by complainant should not have been allowed by learned State Commission.

7. NOW , the question is how much amount should have been allowed by the learned State Commission?

8. LEARNED State Commission has placed reliance on the report of M/s. Accurate Surveyors who has determined the value at Rs.1428/ - per square meter whereas surveyor had calculated the cost of construction @ Rs.3000/ - per sq. of 1486 sq. mt. blow room building with ACC sheet, etc. Learned State Commission observed that there was nothing to discard the report of M/s. Accurate Surveyors which was based on CPWD rates prevailing at that time, but perusal of record clearly reveals that sheds were having load bearing brick walls with RCC columns and tie beams and the room has structural steel trusses and purlins with AC sheet roofing. Thermal Insulation with glass -wool had been provided above false ceiling. The rear and the two side wings were also having RCC roof. On the other hand, M/s. Accurate Surveyors has calculated cost of construction on the basis of rate of construction on CPWD plinth area rates of food grains stores having specifications of ACC sheds whereas, insured premises was having load bearing brick walls with RCC columns and tie beams and roof was having structural steel trusses and purlins with AC sheets and thermal insulation with glass -wool had been provided above false ceiling. In such circumstances, both types of constructions cannot be equated and learned State Commission has committed error in allowing claim on the basis of report of M/s. Accurate Surveyors. As per survey report, surveyor assessed value at risk Rs.44,58,000/ - on reinstatement basis and after taking average clause 44.86%, assessed net loss of Rs.2,61,518.91 and on depreciation basis he assessed value at risk Rs.31,20,600/ - and after taking average clause 64.10% he assessed net loss Rs.2,61,383.05 meaning thereby, practically, there is no difference in net loss on both reinstatement basis and depreciation basis.

9. IT is admitted case of the complainant that he has not re -instated property and as per Annexure ''A '' of the policy, reinstatement of property has to be completed within 12 months after the destruction or damage. As re -instatement has not been done within the provided period of 12 months, complainant is not entitled to loss on re -instatement basis. In such circumstances, complainant is entitled to get re -imbursement of loss to the property on deprecation basis, which comes to Rs.2,61,383.05 which has already been allowed by surveyor and paid by OP and learned State Commission has committed error in allowing Rs.14,84,406/ - on account of loss on depreciated value for the blow room

building and to this extent, impugned order is liable to be morified.

10. IN the light of aforesaid discussion, learned State Commission has committed error in allowing additional Rs.12,25,610.90 on account of loss to the blow room building and to this extent, appeal is to be allowed. Consequently, appeal filed by the appellant is partly allowed and impugned order dated 20.04.2007 passed by the State Consumer Disputes Redressal Commission, UT Chandigarh in Consumer Complaint No. 88 of 2006 - Punjab Fibres Ltd. Vs. National Insurance Co. Ltd. is modified and it is held that respondent is entitled to receive Rs.3,51,233.10 from the appellant instead of Rs.15,76,844/ - and rest of the order is upheld with no order as to cost.

