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(1997) 05 NCDRC CK 0084

In the National Consumer Disputes Redressal Commission

National Insurance Co. Ltd. — APPELLANT

Vs

RAJASTHAN TUBE MANUFACTURING CO. LTD. — RESPONDENT

Date of Decision : 30-05-1997

Acts Referred:

Citation : 1997 2 CPC 362 : 1997 2 CPR 225 : 1997 3 CPJ 125

Hon'ble Judges : V.Balakrishna Eradi , S.S.Chadha , S.P.Bagla , C.L.Chaudhry J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against the order dated 22.11.1993 passed by the State Commission, Rajasthan, directing the National Insurance Co. Ltd. to pay a sum of Rs. 4,62,317/- together with interest at the rate of 18% p.a. from 7.10.1991 until payment.

2. WE may summarise the facts, which have given rise to this controversy as under: The complainant-respondent herein, got his goods, stock, spare and raw material, finished goods and unfinished goods kept in the factory premises insured with the opposite party for the period 27th June, 1990 to 26th June, 1991. The insured amount was Rs. 1,20,00,000/-. The requisite premium was paid on 3rd July, 1990. On account of terrible rainfall, the stocks, goods and other material lying in the factory were damaged and the boundary walls, machines, furniture, electric fittings etc., were considerably damaged. The complainant gave information about the loss to the Insurance Company who appointed a Surveyor for assessment. According to the complainant, the loss was to the extent of Rs.50,00,000/-.The Surveyor by its letter dated 8th February, 1991 informed the complainant that a sum of Rs. 14,16,568/- was payable on account of the loss and he enquired from the complainant to give his consent in regard to that amount. According to the complainant, who was forced by the circumstances, gave his consent for accepting Rs. 14,16,568/- towards the loss and damages. After considerable time, a cheque dated 17th October, 1991 for Rs. 9,54,251/- was sent to the complainant out of the agreed amount of Rs. 14,16,568/- and the balance amount of Rs. 4,62,317/- remained outstanding.

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So, he filed a complaint before the Consumer Disputes Redressal Commission, Rajasthan. Besides Rs. 4,62,317/- the claimant also claimed interest at the rate of 18% p.a. from 3.7.1990, which came to be Rs. 1,24,000/-.

The Insurance Company contested the claim of the complainant. The contract of insurance was admitted. The insurance policy was subject to warranty Nos. 2, 6, 7, 8, 9, 11, 12 and 15. The policy was issued to the complainant on the condition that the insured goods should be kept in A-Class construction and would take necessary precautions so that no damage was caused to the goods. The complainant failed to comply with the conditions, it would be treated as breach of the terms of the policy and, therefore, the Insurance Company was not liable. The rains on 3.7.1990 were admitted. It was also admitted that Surveyor, M/s. Mehta & Padamsey Surveyors Pvt. Ltd. were appointed to assess the loss. Lodging of the claim by the complainant was also admitted. It was pleaded that the complainant did not make proper arrangements for complete safety of goods placed in the premises. The goods and pipes which were got insured were left in the open and carelessly and on that account the loss was caused. It was also admitted that the Surveyor in his report 3rd July, 1990 assessed the loss at Rs. 14,16,568/- and this was the opinion of the Surveyor in the shape of recommendations and the insurance policy was not bound to make payment according to the report of the Surveyor. It was also admitted that the complainant wrote a letter dated 9.2.1991 stating that the loss assessed at Rs. 14,16,612/ was accepted. However, the Insurance Company by its letter dated 10/11.10.1991 informed to the complainant''s Banker, State Bank of Bikaner & Jaipur offering of Rs. 9,54,251/- in full and final settlement. Thereafter, letter dated 11th October, 1991 was written. Alongwith that letter, voucher was sent for the complainant''s signature. The insured as well as the State Bank of Bikaner and Jaipur in compliance of the letter-dated 10.10.1991 signed the voucher for Rs. 9,54,251/- in full and final settlement and obtained a cheque. It was also pleaded that the Company was not bound to make payment of the amount recommended by the Surveyor. On account of the breach of the conditions of the policy, it could repudiate the claim. But the opposite party in order to maintain good relations agreed to pay Rs. 9,54,251 /- to the complainant and the complainant''s banker accepted the amount in full and final settlement and, therefore, the complaint was not maintainable.

3. AFTER considering the relevant contentions of the parties and the material placed on record, the State Commission returned the finding that the complainant and the State Bank of Bikaner & Jaipur did not accept the amount in full and final settlement and it was not open to the Insurance Co. to contend that there was breach of condition of the policy. As a result, the State Commission directed the Insurance Company to pay Rs. 4,62,317/- together with interest at the rate of 18% p.a. from 7.10.1991 until payment for indemnification of the claim which remained unsettled by the opposite party within one month from the date of receipt of the order. Being dissatisfied with the order of the State Commission, the Insurance Company has approached this Commission by filing

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an appeal under Section 19 of the Consumer Protection Act, 1986. Mr. Yogesh Malhotra, Counsel appearing for the appellant contended that the State Commission failed to appreciate that the claim of the respondent was settled in full and final settlement. The amount was offered the respondent in full and final settlement of the claim and the same was accepted by the respondent in full and final settlement and the respondent had given a valid discharge accordingly. On the other hand, Mr. S.M. Suri, Counsel appearing for the respondent contended that the State Commission was right in coming to the conclusion that the amount of Rs. 9,41,250/- was not paid in full and final settlement. The conclusion arrived at by the State Commission was based on the material placed on record and was fully justified. Mr, Malhotra placed reliance on a letter dated 10/11th October, 1991 which was written by the Insurance Co. to the State Bank of Bikaner and Jaipur, wherein it was stated as under: "We acknowledge receipt of your various letter and telephonic reminders for the disposal of the said claim. We also acknowledge the receipt of your letter ref. C&I/ADV/5389 dated 10.10.1991 and regret very much for the delay and inconvenience caused to you. The claim filed has been processed and approved by us for net amount of Rs. 9,54,251/- (Rs. nine lacs fifty four thousand two hundred fifty one) only in full and final settlement of the said loss/claim. We are sending the file to your DO-II, Jaipur for their onward transmission to our Tonk Road Branch, Jaipur. Our Tonk Road Branch will release the loss voucher for the said amount to your brewer M/s. Rajasthan Tube Mfg. Ltd., by the insured on twenty-paisa revenue stamp and duly counter-signed by you. We assure you for our best co-operation and prompt services. Thanking you, Regional Manager"

His contention was that the amount paid to the complainant and its banker was in pursuance to the letter and the amount was accepted by him in full and final settlement.

4. WE have considered the relevant contentions of the parties and had perused the record with their help. The discharge voucher was not filed by the Insurance Company before the State Commission. However, a photocopy of the discharge voucher was filed by the complainant, which reads as under: "Received from National Insurance Company Limited, Tonk Road Branch Jaipur, Divisional Office/ Branch, the sum of Rs. Nine Lacs Fifty Four Thousand Two Hundred Fifty One only in payment of Fire Claim No. 370201/33/1/90- 90/2 & 370204/1/90-90/3 Policy Nos. 3300064 & 3300065 of S.B.B.J.S.M.S., Highway, Jaipur A/c M/s. Rajasthan Tube Mfg. Co. Jaipur. Rs. 9,54,251/-"

The argument advanced by Mr. Malhotra was that the amount was accepted in full and final settlement. It may be stated that the Surveyor has assessed the loss at an amount of Rs. 14,16,612/-. The complainant was informed by the Surveyor if the complainant was ready to accept that amount. The complainant by letter dated 9th February, 1991 agreed to the loss assessed by the Surveyor. The letter dated the 10th October, 1991 quoted in extenso above, nowhere indicates as to how the amount was reduced to Rs. 9,54,251/-. Before reducing

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the amount, the consent of the complainant was not obtained. The amount was reduced unilaterally and the complainant was not informed the basis on which the amount was reduced. The complainant had not given any consent at any time to accept the amount of Rs. 9,54,251/- in full and final settlement. The Insurance Company chose not to file the discharge voucher. It was incumbent upon them to file discharge voucher before the State Commission. However, the complainant filed the photocopy of the discharge voucher which did not indicate that the amount was of Rs. 9,54,251/- was accepted by the claimant and its banker in full and final settlement. Nothing was placed on the record by the Insurance Company to indicate that the amount arrived at by the Surveyor regarding the loss suffered by the complainant was wrong or inflated and that was why the Insurance Company did not accept the amount so assessed by the Surveyor. The Surveyor had assessed the loss at Rs. 14,16,568/- and the complainant had agreed to accept that amount. Besides the letter dated 10/11th October, 1991 there was no material on record on the basis on which it could be inferred that the complainant and the Banker agreed to accept Rs. 9,54,251/- in full and final settlement. The discharge voucher is conspicuously silent on this aspect. Even in the discharge voucher there is no reference to the letter dated 10th October, 1991. If in the discharge voucher, it would have been mentioned that the amount was being accepted in pursuance of the letter dated 10th October, 1991 and then it could be urged on behalf of the Insurance Company that the amount was accepted in full and final settlement. In our opinion the State Commission was right and justified in holding that the amount of Rs. 9,54,251/- was not accepted by the complainant and the bankers in full and final settlement of the claim.

5. THE other contention that was canvassed by Mr. Malhotra was that according to the terms of the policy, the goods were to be kept in A-Class construction which the complainant did not keep and they were left open and, therefore, on account of the breach of the terms of the policy, the opposite party was not liable to pay any amount. We are not impressed with this argument. Surprisingly, the Insurance Company had not placed on record the report of the Surveyor. While assessing the claim, the Surveyor must be having the copy of the insurance policy in order to appreciate the terms and conditions of the insurance contract. THE Surveyor while assessing the loss must have taken into consideration all the relevant factors including the terms of the insurance policy. If the Insurance Company had placed the report of the Surveyor on record, it would have thrown the light on the matters which are now being agitated on behalf of the Insurance Company. Even otherwise, in the light of the letter dated the 10th October, 1991, we do not find any averment made by the Insurance Company that the complainant had not complied with the conditions of the policy rather a regret was shown for the delay and inconvenience caused to the complainant. In our opinion, the State Commission rightly repelled the contention of the Insurance Company by holding that it was not open to the Insurance Company to contend that there was breach of conditions of the policy and, therefore, they were not

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liable to pay that amount. THE Surveyor obtained the consent of the complainant for Rs. 14,16,568/- and a letter to that effect was given to him. In those circumstances, the complainant could not be non-suited for the reason that there was a breach of the conditions of the policy. We agree with the finding reached by the State Commission and we hold likewise.

6. IN the result, we find that the appeal is devoid of merit and it deserves dismissal. We order accordingly and dismiss the appeal with costs which are quantified at Rs. 2,000/-. The appeal is finally disposed of. Appeal dismissed with costs.

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