

(2013) 05 NCDRC CK 0069

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO. LTD

APPELLANT

Vs

SHIV SHANKAR , Mahaveer Prasad Dhanuka Cloth Merchant

RESPONDENT

Date of Decision : 23-05-2013

Acts Referred:

Citation : 2013 0 NCDRC 443 : 2013 3 CPJ 353

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : AJAY MAJITHIA , RISHI MATOLIYA

Judgement

1. THIS revision petition has been filed by the petitioner National Insurance Company, against the impugned order dated 23.02.2008 passed by the Rajasthan State Consumer Disputes Redressal Commission (for short "the State Commission ") in FA No. 1635/2003 "National Insurance Co. Ltd. vs. Shiv Shankar and Anr. " by which appeal filed by the petitioner against the order dated 31.07.2003 passed by District Consumer Disputes Redressal Forum, Sriganganagar, was dismissed. The District Forum had allowed the complaint filed by the present respondents Shiv Shankar and M/s. Mahaveer Prasad Dhanuka, vide this order.

2. BRIEF facts of the case are that the complainants/ respondents obtained a cash credit limit for Rs.1,00,000/- from State Bank of India, Sadulshahar for their business of clothes and Insurance Policy was got issued from the petitioner on 22.01.2001 for Rs.1,50,000/-. On 24.01.2002, at mid-night, fire broke out in the shop of the complainant, resulting in damage to the stocks and building. An FIR was lodged with the police. It has been stated by the complainant that the shop is 20 ft. long and 10ft. wide and wooden racks have been fixed on three sides of the said shop, where clothes are kept. The petitioner appointed a surveyor who calculated the loss to be Rs.22,075/-. However, the complainants lodged a complaint with the District Forum Sriganganagar, saying that they are entitled for a compensation of Rs.2,01,010/-. The District Forum vide order dated 31.07.2003 directed that the petitioners shall pay Rs.1,40,000/- to the complainants along with Rs.5,000/- for mental agony suffered and cost of

litigation. The amount was to be paid within a period of two months. The petitioners were required to pay interest @9% p.a. on the awarded amount with effect from 10.07.2002. The complaint was dismissed, vis-a-vis, the State Bank of India Sadulshahar. An appeal was filed by the present petitioner against the order of the District Forum, but the same was ordered to be dismissed vide impugned order dated 23.02.2008. It is against this order that the present revision petition has been filed. Heard the learned counsel for the parties and perused the record.

3. WHILE arguing the case, the counsel for the petitioner stated that out of the amount of Rs.1.40 lakh awarded by the District Forum and confirmed by the State Commission, the petitioner had already paid a sum of Rs.1,00,000/- to the respondents. Balance amount of Rs.40,000/- and the interest on the awarded amount had, however, not been paid. Learned counsel for the petitioner has drawn our attention to the findings given by the surveyor saying that the estimated loss was Rs.1,92,300/-, but the assessed loss was Rs.32,460/- only. It has been clearly brought out in the report of the surveyor that the insured had not produced books of accounts, purchase bills, sales bills and other relevant records for which he stated that the same had been burnt. The FIR lodged with the Police is also silent about the burning of the books of accounts and other records. It has also been stated in the said report that the insured is running a ration depot within the same shop and it is not a cloth showroom only. The surveyor has enumerated various items of clothes which are reported to be lost during fire and assessed the total loss to be Rs.32,460/- and excluding Rs.10,000/- for the excess clause, the assessed loss is only Rs.22,460/-. The report of the surveyor was based on a careful examination of the situation on the spot. Learned counsel argued that a major portion of the premises was being used as ration depot only and there were just two racks of clothes in the shop.

4. THE learned counsel for the respondents stated that the stock position shown to the bank as on 1.1.2002 stated that the material worth Rs.2,01,010/- was lying in the shop and the claim had been given as per this figure only. The learned counsel for the respondent further stated that the report of the surveyor could not be relied upon, as it did not present the correct picture on record. The main business of the respondent was the cloth business only and he should be adequately compensated. From the averments made by the parties and material on record, the factum of fire incident having occurred has been proved and has not been denied by the petitioner also. The only controversy is regarding the value of the loss suffered by the complainants during fire episode. The insurance policy has been taken for a sum of Rs.1,50,000/- and hence the compensation cannot exceed this amount as correctly observed by the District Forum. It has been stated in the written statement filed by the petitioner that half-burnt racks were intentionally taken away, immediately after the fire by the complainant, because of which the surveyor was unable to assess the actual condition of the shop. The surveyor has brought out in his report that the size of the shop was 10ft. X 20ft. but the complainant used only 1/3rd portion of the shop for storage

of cloth in 3 racks fitted therein, which was clear from the fire marks present on the walls for which the insured agreed during his visit. The remaining shop was being used for running a ration depot. The surveyor has stated that the insured had put partly burnt wooden rack in front of his shop and tried his best to change the original position of the spot so as to mislead the facts. He also did not extend any cooperation in getting the salvage checked and did not produce books of accounts, purchase bills, sales bills, etc. saying that the same had been burnt in fire. The FIR was also silent about the burning of books of accounts. His father Mahaveer Prasad Dhanuka informed the tehsildar that all goods, furniture and records had been burnt. The insured also put pressure on the surveyor to assess the loss on the higher side.

5. THE report submitted by the surveyor says that the total loss assessed was Rs.32,460/- and making a provision of Rs.10,000/- as excess clause, the amount remains Rs.22,460/- only. The surveyor has based his report taking certain quantities for different items of material but the basis for these figures has not been stated anywhere, neither the basis for the rates mentioned for each item has been explained.

6. IT is made out from the record that the insurance company has already made a payment of Rs.1 lakh, whereas the amount for which goods were insured is Rs.1.5 lakh. Considering the overall facts and circumstances of the case and the material on record, it is prudent to presume that the total loss involved in the case may be taken as Rs.1.10 lakh and making account for the excess clause, the respondent is entitle to Rs.1 lakh, which he has already received from the petitioner. This petition is, therefore, disposed of observing that no further amount shall be payable by the petitioner to the respondent in addition to whatever respondent has already been paid. There shall be no order as to costs in view of the facts of the case.