(2014) 11 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

NATIONAL INSURANCE CO. LTD. — APPELLANT

Vs

Verka Indane Gas Service Verka — RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Citation : (2014) 11 NCDRC CK 0047

Hon'ble Judges : V.K.JAIN J.

Judgement

1. THE complainant obtained an insurance policy from the petitioner -company for the period from 07 -03 -2008 to 06 -03 -2009 in respect of the goods kept in its premises. In the night intervening 20/21 -01 -2009, some unidentified persons committed theft of 119 gas cylinders, 3 LPG hot plates, 10 lighters and 3 lighter refills from the premises of the complainant and an FIR in this regard was lodged at Police Station -Sadar in Amritsar. The complainant lodged a claim with the petitioner -insurance company and submitted the requisite documents to establish the loss sustained by it. However, since the claim amounting to Rs. 2,05,196/ - was not paid the complainant approached the concerned District Forum by way of a complaint seeking the aforesaid amount along with compensation amounting to Rs. 10,000/ -.

2. THE complaint was resisted by the insurance company primarily on the ground that the requisite documents have not been submitted. It was also pointed out in the reply that the surveyor had assessed the loss to the complainant at Rs. 1,25,035/ -. The District Forum vide its order dated 24 -08 -2012 directed the petitioner -insurance company to pay a sum of Rs. 1,25,035/ - to the complainant along with interest at the rate of 9% per annum from the date of the complaint till date of payment. No other relief, however, was granted to the complainant.

3. BEING aggrieved from the order of the District Forum the complainant approached the concerned State Commission by way of an appeal. The State Commission vide its order dated 10 -02 -2014, modified the order passed by the District Forum and directed the insurance company to pay a sum of Rs.

2,05,196/ - instead of Rs. 1,25,035/ - awarded by the District Forum. Being aggrieved from the aforesaid direction of the State Commission the insurance company is before us by way of this revision petition.

4. THE only contention of the learned counsel for the petitioner is that though the stock kept in the premises of the complainant at the time theft took place was much more than the sum insured by them, the State Commission instead of making proportionate deduction has directed payment of the entire loss sustained by the claimant. The insurance policy to the extent it is relevant for our purpose reads as under: "Average: If the property hereby insured shall at the time of any loss or damage be collectively of greater value than the sum insured thereon, then the insured shall be considered as being his own insurer of the loss or damage accordingly Every item, if more than one, in the policy, shall be separately subject to this condition."

5. IT would, thus, be seen that if the property which the complainant had kept insured was at any time to be of a value higher than the sum insured, than the complainant was to be considered as its own insurer for the loss or damage, meaning thereby in such a case the complainant was to bear the proportionate loss instead of seeking reimbursement from the insurance company.

6. A perusal of the survey report would show that at the time the theft took place the value of the stock kept in the premises of the complainant was Rs. 11,48,767/ -. Admittedly, the complainant has taken insurance policy only for the sum of Rs. 7,00,000/ - The surveyor, therefore, rightly applied the above referred average clause contained in the insurance policy and computed the liability of the insurance company accordingly. The learned counsel for the complainant submits that no plea based upon the average clause was taken in the reply filed by the insurance policy. This, however, would not be material considering that the insurance company was yet to pay to the complainant at the time the reply was filed. Moreover, the surveyor had already applied the average clause for the purpose of computing the liability of the insurance company. Therefore, it cannot be said that the complainant was taken by surprise on account of deduction made by the surveyor due to the value of the stock kept in the premises of the complainant being higher than the sum for which the insurance policy was obtained.

7. FOR the reasons stated hereinabove, the impugned order passed by the State Commission cannot be sustained and the same is hereby set aside and the order passed by the District Forum is, accordingly, restored. In the facts and circumstances of the case, there shall be no order as to costs.