(1991) 10 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

National Insurance Co.Ltd APPELLANT

Vs

MAHENDER KR.JAIN RESPONDENT

Date of Decision : 29-10-1991

Acts Referred:

Citation : 1992 2 CPJ 908 : 1992 2 CPR 725

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi J.

Final Decision : Appeal of insurer allowed

Judgement

1. APPEALS No. 174/90 and 235/90 arise out of the order dated 25.7.1990 passed by the District Forum, Jaipur in Complaint Case No. 693/89. The District Forum has ordered for the payment of Rs. 2,524/- for indemnifying the loss suffered by the complainant. This amount is to be paid by the opposite parties. The opposite parties-appellants have filed Appeal No. 174/90 praying that the complaint should be dismissed. Whereas the complainant has filed Appeal No. 235/90 praying that the entire amount as claimed by him in the complaint i.e. Rs. 6,209,40P should be awarded to him by the opposite parties. For the sake of convenience the complainant shall be referred as "insured" and opposite parties as "insurers". The insured is one of the members of M/s. Jai Bank Karamchari Housing Co-operative Society Limited, State Bank of Bikaner & Jaipur, S.M. S. Highway, Jaipur which is a registered Co-operative Society.

2. THE aforesaid Society, under the group Insurance Scheme took a fire Insurance Policy No. 3443/3300013/86 dated 23-6-1986 for residential buildings of their members against the risk of Fire, RSD, MD. Floods and Earthquake, Aviation etc. THE name of the insured appears at S. No. 170 of the list of members. THE insured has averred that due to heavy rains and storm at Jaipur on 8-5-1987 his house got damaged. THEreupon Shri R.K. Soni, Field Officer of the opposite parties surveyed the site and submitted his report to the insurers. THE claim was submitted by the insured on 15-10-1987 to the insurers alongwith the bills of the repairs to the tune of Rs. 6,209/40. THE insurers agreed for paying a sum of Rs. 336/- in the settlement of the claim. THE insured submitted

a representation to the insurers to settle the claim but no reply was given by the insurers. THErefore, he filed the complaint before the District Forum, Jaipur on 1010-1989 praying that besides the sum of Rs. 6,209,40 interest @ 18% p.a. as damages since the date of the filing of the claim of Rs. 2,068/-and also a sum of Rs. 2,000/- as compensation for mental torture may be awarded. Thus a direction was sought against the insurers by the insured to the payment of Rs. 10,277.40 besides the costs of the complaint. The insurers/opposite parties raised an objection that the complaint is not maintainable as the policy was issued in the name of Society which is a necessary party. A plea was taken that in fact the claim of the complainant was settled by the insurers and thus the present complaint did not lay before the District Forum. On merits it was submitted that Shri R.K. Soni was appointed as surveyor to assess the loss and he gave the report after assessing the loss on 7.7.1988, in which Rs. 2,524/- were assessed as loss and the cost of the house was assessed as 3 lacs. According to the insurers the house was not get insured by the insured at its value and it was under insured and therefore as per the Insurance Policy the insured was entitled to make deduction as per condition of the average clause and as such a sum of Rs. 336/- was only payable to the complainant but the complainant refused to accept the same. It was submitted that according to the provisions of law, assessment of loss has to be made by a licensed surveyor who gives the report as per the terms of the Insurance and if the insured has violated the terms of the insurance policy and got the building insured then as per the terms the insurers are only liable for the amount which can be arrived at after making deductions of Rs. 2,188/- as per law. The District Forum directed the insurers to pay Rs. 2,524/- vide its order dated 25.7.1990. Hence the two appeals as aforesaid.

We propose to take the appeal of the insurers first. Fire Claim Scruitiny Forum is on record. It shows that the policy was for the period 13.6.1986 to 13.6.1987. The group insurance was for Rs. 80,70,000/- as per list. For item Nos. 1 to 193 sum assured was Rs. 40,000/- each and for item Nos. 194 to 207 sum assured was Rs. 25,000/- each. It is submitted that at S. No. 170 in the list is concerned the sum assured was Rs. 40,000/-. The surveyor assessed the loss at Rs. 2,524/- and according to average clause deduction of Rs. 2,188/- was made and thus net loss was Rs. 336/-. Thus approval for the payment of Rs. 336/- was given. The supporting documents are (i) photographs-5, (ii) F.I.R., (iii) Fire Brigade Report, (iv) Claim Form etc.

3. LEARNED Counsel for the insurers submitted that the District Forum thus went wrong when it ordered for payment of Rs. 2,524/-on the basis of the loss assessed by the surveyor. The policy is on record. Condition No. 17 of the policy reads as under:-- "17. If the property hereby insured shall at the breaking out of any fire be collective of greater value than the sum insured thereon, then the insured shall be considered as being his own insurer for the difference, and shall bear a rate able proportion of the loss accordingly. Every item, if more than one, of the policy shall be separately subject to this condition ".

This is the average clause which had been made applicable. The complainant has not placed any material on record to show what was the market value of the house at the time when the damage was caused to the house. In the Fire Claim Scrutiny Form the valuation of the house is mentioned as Rs. 3 lacs. Taking this as value the loss assessed was Rs. 2,524/-. On account of the heavy hail storm the loss was caused. The window glasses were broken and the upper portion the ventilation glasses were broken. The District Forum has merely stated that the surveyor has assessed the loss at Rs. 2,524/- and that on the ground of under insurance the deduction was improper and that for the under insurance and insurers are liable. According to the terms of the policy, Condition No. 17 is applicable for the purpose of the payment of the loss and according to which Rs. 336/- was arrived at. The deduction can be made on the basis of the under insurance. The District Forum went wrong when it allowed a sum of Rs. 2,524/- without deducting the amount on the basis of the under insurance of the house in question. The insured is only entitled on the basis of the assessed loss of Rs. 2,524/- to Rs. 336/- only under the terms and conditions of the policy and not more than that. According to the insurance this sum was offered to the complainant/ insured which he refused to take. The insurers should have taken steps for remitting of the amount so that it could be received by the complainant and if he had refused it, the matter would have been otherwise. The insured was deprived of Rs. 336/- though the surveyor submitted the report on 7.7.1988. Thereafter the approval was made as appears from the Fire Claim Scrutiny Form, still the amount was not paid to the insured. It would be just and reasonable to award interest by way of compensation on the amount of Rs. 336/- @ 12% p.a. after two months of the submission of the report i.e. from 7.9.1988. We, therefore, direct that the insurers shall also pay interest From 7.9.1988 until the date of payment of Rs. 336/- @ 12% p.a. The complainant has filed the appeal for enhancement of the compensation. In view of the findings which we have arrived at in respect of Appeal No. 174/1990, it is not necessary to examine the appeal of the complainant/appellant on merits and it deserves to be dismissed.

4. THE result is that Appeal No. 174/90 filed by the insurers against the insured succeeds and the order passed by the District Forum on 25.7.1990 is modified. THE opposite parties/insurers shall be liable to pay Rs. 336/- together with interest @ 12% from 7.9.1988 until date of payment for indemnifying the loss suffered by the complainant-insured. One months'' time is allowed to the opposite parties-insurers after the receipt of the order to comply with the order failing which resort will be made to Section 27 of the Act. THE appeal filed by the complainant-insured is dismissed. In the circumstances of the case there will be no order as to costs. Both the appeals are decided accordingly. Appeal of insurer allowed - Appeal of Complainant dismissed.

