(2016) 04 NCDRC CK 0087

In the National Consumer Disputes Redressal Commission

Case No : 395 of 2008

NATIONAL INSURANCE CO.LTD. — APPELLANT

Vs

M/S. G.D. MISHARDHATU LTD. — RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Citation : 2016 2 CPR 620

Hon'ble Judges : K.S. Chaudhari

Advocate : KISHORE RAWAT, Sukumar Pattjoshi, Sunil Mund

Judgement

1. This appeal has been filed by the appellant against the order dated 9.7.2008 passed by the State Consumer Disputes Redressal Commission, UT, Chandigarh (in short, ''the State Commission'') in Consumer Complaint No. 926/2008 - M/s. G.D. Mishardhatu Ltd. Vs. National Insurance Co. Ltd. & Ors. by which, complaint was partly allowed.

2. Brief facts of the case are that complainant/respondent is a limited Company engaged in manufacture of stainless steel ingots. Complainant purchased engine No. 25222504 D.G. set vide bill dated 6.10.2003 for Rs.40,44,060/- and D.G. set with aforesaid engine was insured with OP appellant for a period of one year from 20.6.2004 to 19.6.2005. On 3.1.2005, D.G. set stopped working after emitting an abnormal sound and broke down. OP was intimated and intimation was also given to authorized service dealer of the manufacturer, M/s. OVN Trading Engineers Pvt. Ltd. Manufacturer''s officials visited the factory and checked the engine, but could not repair engine and asked complainant to send to their workshop. OP appointed Protocol Surveyors & engineers Pvt. Ltd. as Surveyor on 12.1.2005 to assess loss, who inspected site on the same day and on 14.1.2005 at the premises of M/s. OVN Trading engineers Pvt. Ltd. and information called by surveyor was supplied to him. It was further submitted that lower portion of engine with crankshaft was sent to M/s. Cummins Diesel Sales & Service (India) Ltd., who submitted their

report on 5.2.2005. On 1.3.2005, complainant submitted their estimate of repair for Rs.32,80,371/- along with Failure Investigation Report. Surveyor and OP again demanded documents, but did not decide claim. On 8.11.2005, surveyor was intimated that repair of engine is not economically feasible and requested him to assess loss on total loss basis, but OP vide letter dated 11.9.2006 repudiated the claim on account of non-maintenance of log book. Alleging deficiency on the part of OP, complainant filed complaint before learned State Commission. OP resisted complaint and submitted that complainant does not fall within purview of consumer. It was further submitted that surveyor assessed loss to the extent of Rs.8,72,274/-, but at the same time recommended to close the case as ''no claim'' on account of violation of policy conditions by not keeping log book, etc. It was further submitted that D.G. set has not been repaired so far; so, there was no question of making payment. Denying any deficiency on their part, prayed for dismissal of complaint. Complainant also filed rejoinder. Learned State commission after hearing both the parties allowed complaint and directed OP to pay Rs.29,02,790/- with 12% p.a. interest along with cost of Rs.20,000/- against which, this appeal has been filed.

3. Heard learned Counsel for the parties and perused record.

4. Learned Counsel for the appellant submitted that OP rightly repudiated claim on account of violation of terms and conditions of policy, but learned State Commission committed error in allowing complaint on the basis of report of surveyor, D.K. Taneja which was given after 3 years, who did not consider even depreciation; hence, appeal be allowed and impugned order be set aside or at the most, claim may be allowed to the extent of loss assessed by their surveyor. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law except to the extent that Rs.26,78,552/- should have been awarded against Rs.29,02,790/- and prayed for dismissal of appeal except to the aforesaid extent.

5. It is not disputed that complainant obtained insurance coverage from OP and during subsistence of insurance policy; D.G. set stopped working after emitting an abnormal sound on 3.1.2005.

6. Surveyor appointed by OP has assessed loss to the tune of Rs. 8,72,274/- after deducting 75% depreciation on various parts and on account of under insurance. No reason has been given by surveyor for allowing depreciation at the rate of 75% on various parts of D.G. set which was only 1? year old and I do not find any under insurance because insurance has been obtained to the extent of Rs. 60 lakhs for engine and Rs.10 lakhs for alternator make and as per invoice value of Cummins engine was Rs.58,51,545/- and learned State Commission has rightly discarded surveyor''s report for assessment of loss on these counts.

7. As far Mr. D.K. Taneja''s report is concerned, it is not surveyor''s report, but he has given his report as an expert witness and has filed affidavit and has been cross-examined and learned State Commission has not committed any error in allowing complaint on the basis of expert opinion of Mr. D.K. Taneja.

8. Learned Counsel for the appellant submitted that inspite of repeated letters, complainant has not supplied requisite documents for assessment of loss. Perusal of letter dated 2.6.2006 reveals that complainant intimated to the surveyor that they do not have any annual maintenance contract with M/s. OVN Trading Engineers Pvt. Ltd. and they supplied technical report of repairs. When

there was no annual maintenance contract with M/s. OVN Trading Engineers Pvt. Ltd., it could not have been supplied. Complainant has not provided maintenance of log book and it appears that complainant is not maintaining log book which ought to have been maintained as per terms and conditions of policy. Mr. Taneja in reply to Question No. 9 apprised that though no log book for D.G. set was maintained by the complainant, but set was being rightly maintained as per manufacturer''s instructions and he further verified maintenance report of M/s. OVN Trading Engineers Pvt. Ltd. dated 20.10.2004, 29.11.2004 nd 30.12.2004 which proved that inspection and maintenance of D.G. Set was being carried out as per manufacturer''s schedule check list. Merely by not maintaining log book for D.G. set, whole claim could not have been repudiated by OP and at the most, some amount could have been deducted from the permissible claim for not maintaining log book of D.G. set.

9. As per Failure Inspection Report given by Mr. O.P. Gupta, Works Manager, all pistons damaged with rings which was observed at the initiate stage of seizure and further observed that seizure of main bearings may be due to Oil Starvation/ Lack of Lubrication and it was further observed that engine failure was accidental and has not occurred due to wear and tear and / or any maintenance and / or operation and / or manufacturing defect/s and in the light of aforesaid report, complainant was entitled to compensation as calculated by Mr. D.K. Taneja after deducting some amount for failure to maintain D.G. log book.

10. Mr. D.K. Taneja assessed loss of Rs.26,78,552/- on total loss basis and he assessed loss of Rs.29,02,790/- on repair basis. When complainant was claiming loss on total loss basis, learned State Commission could not have allowed loss on repair basis and learned Counsel for the respondent admits to this extent that amount awarded by learned State Commission may be reduced to this extent and in such circumstances, complainant could have been entitled to Rs.26,78,552/- at the most. As complainant failed to maintain D.G. set log book which is violation of manufacturer''s instructions to some extent, I deem it appropriate to reduce aforesaid amount by another Rs.2 lakhs and in such circumstances, complainant is entitled to Rs.24,78,552/- against Rs.29,02,790/- allowed by learned State Commission and to this extent appeal is to be allowed.

11. Consequently, appeal filed by the appellant is partly allowed and order of learned State Commission dated 9.7.2008 passed in Consumer Complaint No. 926/2008 - M/s. G.D. Mishardhatu Ltd. Vs. National Insurance Co. Ltd. & Ors. is modified and order awarding compensation of Rs.29,02,790/- is substituted by Rs.24,78,552/- and rest of the order is upheld. Parties to bear their costs.

