(2011) 02 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

National Insurance Co.Ltd. APPELLANT

Vs

Ratanbhai Lallubhai RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Citation : 2011 0 NCDRC 96

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Petition is dismissed

Judgement

1. THE present revision petition has been filed by the National Insurance Co.Ltd. (hereinafter referred to as the Petitioner) against the order of the State Consumer Disputes Redressal Commission, Gujarat (hereinafter referred to as the State Commission) in favour of Ratanbhai Lallubhai (hereinafter referred to as the Respondent).

2. THE facts of the case are that the Respondent obtained Standard Fire and Special Peril Policy for the stock and stock-in trade for the sum of Rs.15 lakhs from the Petitioner/Insurance Company for the period from 10.10.2002 to 09.10.2003. During the night of 23-24.08.2002, there was heavy and continuous rainfall in and around the city of Ahmedabad which led to accumulation of water and choking-up of the drainage pipes in large parts of the city. THE premises of the Respondent was also affected during these rains and caused damage to the stock therein. Respondent, therefore, lodged a claim about his loss with the Petitioner/Insurance Company which appointed a Surveyor who assessed the loss of stocks of the Respondent to the tune of Rs.4,30,642/- and after deducting Rs.1,35,000/- towards salvage and Rs.10,000/- towards excess amount recommended a payment of Rs.2,85,642/- to the Respondent. Petitioner, however, sent the vouchers only for Rs.1,87,477/- to the Respondent who protested contending that the balance of Rs.98,165/- should also be paid to him so that he could get the admissible claim amount as assessed at Rs.2,85,642/- by the Surveyor. Petitioner/Insurance Company, however, did not accede to the request of the Respondent. Respondent, therefore, filed a complaint before the

District Forum on the grounds of unfair trade practice and deficiency in service and requested that the Petitioner be directed to settle the claim at Rs.2,85,642/- along with other reliefs. Petitioner, however, denied the complaint and stated that the amount of Rs.1,87,477/- was offered to the Respondent on the basis of the report of the Surveyor who arrived at this figure after reducing the value of some of the stocks by Rs.98,165/- due to ageing since these had been lying for more than 6 months. Therefore, the offer of Rs.1,87,477/- based on the assessment of the Surveyor was fair and equitable.

The District Forum after hearing both parties accepted the contention of the Petitioner/Insurance Company on the Surveyors evaluation report and held that the Petitioner had rightly offered a claim amount of Rs.1,87,477/- to the Respondent and the complaint was accordingly dismissed.

3. AGGRIEVED by this, Respondent filed an appeal before the State Commission which accepted the appeal by concluding that reducing the claim of the complainant by Rs.98,165/- is not justifiable and the Surveyor could not have reduced the claim to that extent on the grounds of ageing of stocks. There is also no provision which has been brought in evidence in any of the terms and conditions of the insurance policy to reduce the claim under this head. The operative part of the order of the State Commission in this connection reads as follows: It will be seen from the above that the dispute is in a narrow compass inasmuch as the reduction of the complainants claim to the tune of Rs.98,165/- under the head ageing. Rest of the survey report is no disputed. Admittedly, against the claim of Rs.4,30,642/-, the opponent insurance company offered to pay Rs.1,87,477/-. The appellant did not accept the discharge voucher of Rs.1,87,477/- and insisted for payment of Rs.2,85,642/- inclusive of Rs.98,165/-, the extent by which the claim has been reduced by the surveyor because of ageing. It is not known what is ageing. It may be seen that the complainants claim has been reduced to the extent of Rs.1,35,000/- being the salvage amount. Letter dated 06.10.2003 specifically suggests that the complainant stated that the cloth bales(stock) shown in the letter are of the year 2000 and that the said stock (cotton bales) would fetch 20% to 30%; there are as many as six types of cotton bales (stock) with bill number and date of purchase which are of the year 2000 and 2001 with rates, length, amount etc. The total of the stock shown in the letter dated 06.10.2003 is Rs.69,830/- (to round up Rs.70,000/-). 30% of the above amount would come to Rs.21,000/- which would be the salvage value. In the instant case, the salve deducted is to the tune of Rs.1,35,000/-.

4. AS observed above, the terms and conditions of the policy are not coming forth on record. It need hardly be said that the terms and conditions of the policy would either entitle or disentitle the insurance company to accept or reject the claim of the complainant under a particular head. In absence of the terms and conditions of the policy, it cannot be said that the insurance company and for that matter, the surveyor is entitled to reduce the claim of the complainant under

the heard of ageing. It is the terms and conditions of the policy which would bind the insurer as well as the insured. In absence of any such term or condition entitling the insurance company to reduce/disallow the claim under the head ageing and reducing the claim under the head ageing would in our opinion tantamount to travelling beyond the contract between the parties. Just as the complainant has to take the contract with terms and conditions embodied therein as it is, the insurance company has also to take the contract with terms and conditions as it is. The State Commission while quashing the order of the District Forum directed the Petitioner/Insurance Company to pay the Petitioner Rs.2,85,477/- with interest @ 6% from the date of the complaint till realisation of the amount along with Rs.2,500/- as cost of litigation. Hence the present revision petition. Learned counsel for both parties were present and made oral submissions essentially reiterating the submissions made before the fora below in their respective cases. We have heard the learned counsel at length and have also gone through the evidence on record.

5. AS rightly observed by the State Commission, the dispute in a narrow compass pertains to reduction of Petitioners claim by Rs.98,165/- under the head ageing. In this connection, we have gone through the report of the Surveyor wherein it is stated that 13 articles amounting to approximately Rs.1,35,000/- were lying for more than one year and others were lying for more than 6 months and normally textile fabric stock does not remain unsold for long and since trends/demands change, its value, therefore, gets reduced if lying for quite some time. Accordingly the value of the affected stock was reduced by Rs.98,165/- and calculated as being Rs.3,32,477/-. From this amount Rs.1,35,000/- was deducted towards salvage value and Rs.9,874/- towards excess @ 5% of the claim amount; hence the total loss was worked out as being Rs.1,87,603/-. This reasoning of the Surveyor to reduce the value of the compensation as calculated above does not inspire confidence. Textile-fabric stocks are not perishable items which deteriorate or age by not being sold for merely a year or so. Further, these are not stitched garments which could go out of fashion. Therefore, reducing their value by almost Rs.1 lakh on this account is not tenable. Further, as observed by the State Commission that in the absence of any terms or condition in the insurance policy to reduce or disallow the claim under the head ageing, it would not be justifiable to reduce the claim merely on the basis of the report of the Surveyor. The onus to prove that there was any such clause or condition in the insurance policy was on the Petitioner which has failed to produce any evidence to this effect. Keeping in view these facts, we agree with the well reasoned order of the State Commission which is upheld. The Petitioner/ Insurance Company is directed to pay the Respondent a sum of Rs.2,85,642/- with 6% interest from the date of filing of the complaint till realisation and Rs.2,500/- as costs. The revision petition is dismissed.